SECURITIES REGULATION THAT WORKS

THE BC MODEL

A New Way to Regulate

Draft Legislation

April 15, 2003

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Securities Regulation That Works

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Securities Act

Part 1 Definitions and Interpretation

Division A
Definitions

1A1. In this Act:

AIF means the annual information form in the required form or in another form specified under the rules;

adviser means a person engaging in, or holding out as engaging in, the business of

(a) managing an investment portfolio on behalf of a client, or

(b) advising a client on an investment or trading in a particular security;

associate means, if used to indicate a relationship with any person,

(a) a partner, other than a limited partner, of that person,

(b) a trust or estate in which that person has a substantial beneficial interest or for which that person serves as trustee or in a similar capacity,

(c) an issuer in respect of which that person owns or controls voting securities carrying more than 10% of the voting rights attached to all outstanding voting securities of the issuer, or

(d) a family member of that person or a family member of that person's spouse, if the family member has the same home as that person;

authorized market delegate means a marketplace or market services provider that receives a delegation of the commission's power under section 2C1 *[Delegation to authorized marketplace or market services provider]*;

business combination means an amalgamation, merger, arrangement, or similar transaction;

client means a person who has hired a registrant, or is in communication with a registrant about hiring the registrant, to provide trading or advising services;

connected person of an issuer means

(a) an insider, officer, employee, affiliate, or associate of

(i) the issuer,

(ii) a person that is proposing to make a take over bid for the securities of the issuer, or

(iii) a person that is proposing to

(A) become a party to a business combination with the issuer, or

(B) acquire a substantial portion of the property of the issuer,

(b) a person engaging in or proposing to engage in any business or professional activity with or on behalf of the issuer or with or on behalf of a person described in paragraph (a)(ii) or (iii), and its directors, officers, and employees,

(c) a person in possession of inside information if the information was acquired at a time when that person was a connected person under paragraph (a) or (b), or

(d) a person who acquired inside information from another person

  (i) who, at the time, was a connected person under paragraphs (a) to (c) of this paragraph, and

  (ii) whom the person knew or ought reasonably to have known was a connected person under this definition;

continuous disclosure record means, for an issuer that is a public issuer or a public mutual fund, the information that the issuer files or is required to file;

dealer means a person that trades in a security as principal or agent;

decision means a direction, decision, order, ruling, or requirement made under the Act or rules or under a regulatory instrument of a marketplace or market services provider;

derivative contract means any right or obligation to make or take future delivery of

(a) a security,

(b) currency,

(c) a precious stone,

(d) any other thing or interest if the unit of that thing or interest is naturally or by custom treated as the equivalent of any other unit, or

(e) an amount of cash derived from, or by reference to, a variable, including

  (i) a price or quote for anything described in paragraphs (a) to (d),

  (ii) an interest rate,

  (iii) a currency exchange rate, or

  (iv) an index or benchmark;

director means

(a) a director of a corporation, or

(b) an individual performing similar functions for a corporation or for any other person;

due diligence provider means

(a) a dealer registered as an investment dealer under the rules,

(b) a registered adviser, or

(c) another person that the commission approves to review disclosure documents of an issuer or class of issuers;

equity security means any security of an issuer that carries a residual right to participate in the earnings of the issuer and, on the liquidation or winding up of the issuer, in the distribution of its assets;

exchange contract means a derivative contract that meets both of the following requirements:

(a) its performance is guaranteed by a clearing agency;

(b) it is traded on an exchange under standardized terms and conditions set out in that exchange's regulatory instruments, at a price agreed on when the derivative contract or option is entered into on the exchange;

family member of a person means the person's spouse, parent, grandparent, brother, sister, child, or grandchild;

file means deposit with the commission;

fund company means the person primarily responsible for managing a mutual fund;

inside information means

(a) in the case of an issuer that is not a mutual fund, material information that has not been generally disclosed, and

(b) in the case of a mutual fund, significant information that has not been generally disclosed;

insider means

(a) a director or senior officer of a public issuer, or

(b) a director or senior officer of an affiliate of a public issuer whose usual responsibilities provide the individual with routine access to inside information about the public issuer;

issuer means a person that

(a) has a security outstanding, or

(b) proposes to issue a security;

market participant means

(a) a marketplace,

(b) a market services provider,

(c) a registrant or representative,

(d) a person providing record keeping services to a registrant,

(e) an issuer,

(f) a due diligence provider,

(g) a fund company, or custodian of assets or securities, of a mutual fund,

(h) a transfer agent or registrar for securities of an issuer,

(i) a director, officer, or significant securityholder of an issuer,

(j) a general partner of a person referred to in this definition, or

(k) a person that the commission has ordered is exempt, or designated as exempt, from the Act or rules;

market services provider includes

(a) a self regulatory organization,

(b) a regulation services provider, or

(c) a clearing agency;

marketplace means

(a) an exchange, a quotation and trade reporting system, or another person that provides a market or facility for trading securities, or

(b) a dealer that executes a trade of an exchange-traded security outside of a marketplace;

material information means information relating to the business, operations, or securities of an issuer, other than a mutual fund, that would reasonably be expected to significantly affect the value or market price of any or all of the issuer's securities;

misrepresentation means:

(a) in relation to an issuer, other than a mutual fund,

  (i) an untrue statement of material information, or

  (ii) the omission of material information that is

    (A) required to be stated, or

    (B) necessary to prevent a statement from being false or misleading in the circumstances;

(b) in relation to a mutual fund

  (i) an untrue statement of significant information, or

  (ii) the omission of significant information that is

    (A) required to be stated, or

    (B) necessary to prevent a statement from being false or misleading in the circumstances;

(c) in any other circumstances,

  (i) an untrue statement, or

  (ii) the omission of information

about something that a reasonable investor would consider important in making a decision to trade a security or to enter into a trading or advising relationship with a person;

mutual fund includes an issuer of a security that entitles the holder to receive on demand, or within a specified period after demand, an amount computed by reference to the value of a proportionate interest in the whole or in a part of the net assets of the issuer of the security;

officer means

(a) an individual working in an executive capacity for a corporation, or

(b) an individual performing similar functions for a corporation or for any other person;

person includes an individual, corporation, partnership, party, trust, fund, association, and any other organized group of persons and the personal or other legal representative of a person to whom the context can apply according to law;

private issuer means an issuer that is not a restricted issuer, public issuer, or mutual fund, and whose equity securities are owned by not more than 50 persons, counting joint security holders as one and not counting employees or former employees, but does not include an issuer that elected to be a restricted issuer;

public issuer means an issuer other than a mutual fund that has become a public issuer under Part 4 *[Offerings]*;

public mutual fund means a mutual fund that has become a public mutual fund under Part 8 *[Mutual Funds]*;

record includes a book, document, map, drawing, photograph, letter, voucher, paper, and any other thing on which information is recorded or stored by any means whether graphic, electronic, mechanical, or otherwise;

registrant means a person registered or required to be registered under the Act or rules;

regulator means an entity empowered by the laws of a jurisdiction to regulate trading in securities;

regulator delegate means a Canadian regulator that receives a delegation of a power under section 11D3 *[Delegation to other Canadian securities regulators]*;

regulatory instrument means the by-laws, regulations, policies, or other regulatory instruments of a marketplace or market services provider;

representative means a person who trades in a security, or acts as an adviser, as a representative of a registrant, and includes an individual and any entity through which the individual provides services to the registrant or its clients;

restricted issuer means an issuer that is not a public issuer, a mutual fund, or a private issuer and that does not have its securities listed, quoted, or traded on any marketplace;

rule means a rule made under Part 16 *[General Provisions]*;

security includes

(a) an option, subscription, or other interest in or to a security,

(b) a bond, debenture, note, or other evidence of indebtedness, share, or unit, other than

(i) a contract of insurance issued by an insurer, and

(ii) an evidence of deposit issued by a savings institution,

unless it is described in another paragraph of this definition,

(c) an investment contract,

(d) an income or annuity contract, other than one made by an insurer,

(e) an interest in a scholarship or educational plan or trust, other than a self directed plan or trust, and

(f) a derivative contract,

whether or not any of the above relate to an issuer, but does not include a prescribed instrument;

senior officer means any officer of an issuer whose usual responsibilities routinely provide the officer with access to inside information about the issuer;

significant information means information relating to the business, operations, or securities of a mutual fund that a reasonable investor would consider important in making a decision about whether to trade securities of the fund;

significant securityholder means, for a public issuer, a securityholder that

(a) owns or controls 10% or more of any class of the public issuer's voting securities, excluding any securities that the securityholder holds as underwriter in the course of distribution, or

(b) is able to affect materially the control of the public issuer whether alone or by acting in concert with others through an agreement, arrangement, commitment, or understanding;

spouse means a person who

(a) is married, and is not living separate and apart, within the meaning of the *Divorce Act* (Canada), or

(b) is cohabiting with another person in a marriage-like relationship, including a marriage-like relationship between persons of the same gender;

subsidiary means an issuer that is controlled by another issuer; and

trade includes

(a) an acquisition or disposition of a security for valuable consideration on any terms or conditions,

(b) entering into a derivative contract,

(c) acting as an intermediary in a trade,

(d) a transfer of beneficial ownership of a security to a person under a realization on collateral given for a debt, and

(e) any act, advertisement, solicitation, conduct, or negotiation directly or indirectly in furtherance of any of the activities specified in paragraphs (a) to (d).

Division B
Interpretation

Control

1B1 A person controls an issuer if that person

(a) holds voting securities of the issuer, and

(b) could elect a majority of the directors if the votes were exercised.

Affiliates

1B2 An issuer is affiliated with another issuer if

(a) one is the subsidiary of the other, or

(b) the same person controls each of them.

Beneficial ownership

1B3 A person beneficially owns securities that the person owns, directly or indirectly, including those beneficially owned by

(a) an issuer that person controls, or

(b) an affiliate of that person or of any issuer that person controls.

Direct or indirect

1B4 If this Act prohibits or imposes restrictions on any conduct, the same prohibitions and restrictions apply to any conduct that is an indirect means of carrying on the conduct that is prohibited or restricted.

Securities Rules

Part 1 Definitions and Interpretation

Division A
Definitions

1A1 In these Rules:

accredited investor means

(a) a Canadian financial institution, or an equivalent entity in another jurisdiction,

(b) the Business Development Bank of Canada incorporated under the Business Development Bank Act (Canada),

(c) an association under the Cooperative Credit Associations Act (Canada) located in Canada,

(d) a subsidiary of any person in paragraphs (a) to (c), if the person owns all of the voting securities of the subsidiary, except the voting securities required by law to be owned by directors of that subsidiary,

(e) a registered dealer or adviser, a representative of the dealer or adviser, an equivalent entity in another jurisdiction, or an authorized or registered employee or agent of the entity,

(f) any government, government agency, municipality, public board, or commission,

(g) a pension fund that is regulated by the Office of the Superintendent of Financial Institutions (Canada) or a provincial pension commission or a similar regulatory authority in any jurisdiction,

(h) an individual whose net income before taxes exceeded $200,000 or, combined with that of a spouse, exceeded $300,000 in each of the two most recent years and who, in either case, reasonably expects to exceed that net income level in the current year,

(i) an individual who, either alone or jointly with a spouse, owns cash and securities having an aggregate realizable value that before taxes, but net of any related liabilities, exceeds $1,000,000,

(j) an individual who, either alone or jointly with a spouse, has net assets of at least $5,000,000,

(k) a non-individual person, other than a mutual fund or a non-redeemable investment fund, that had net assets of at least $5,000,000 as shown on its most recently prepared financial statements, and any wholly owned subsidiary,

(l) a mutual fund or non-redeemable investment fund if

   (i) all securityholders of the fund are accredited investors, or

(ii) it is a public mutual fund, a public non-redeemable investment fund, or an equivalent entity in another jurisdiction,

(m) a person, if all of the owners of interests in the person are accredited investors, except directors who are legally required to own voting securities of the person, and

(n) a person the commission designates as an accredited investor;

Canadian financial institution means a bank, loan corporation, trust company, insurance company, treasury branch, credit union, or caisse populaire that, in each case, is authorized to carry on business in Canada or in a jurisdiction of Canada, or the Confédération des caisses populaires et d'économie Desjardins du Québec;

Canadian GAAP means generally accepted accounting principles determined with reference to the Handbook;

Canadian GAAS means generally accepted auditing standards determined with reference to the Handbook;

Handbook means the Canadian Institute of Chartered Accountant's publication called the CICA Standards and Guidance Collection (CICA Handbook), as amended from time to time;

interim period means a period starting with the beginning of a financial year and ending nine, six, or three months before the end of the financial year;

fully managed account means an account for which a portfolio manager makes the investment decision and has full discretion to purchase or sell securities without requiring the client's express consent to any transaction;

non redeemable investment fund means an issuer

(a) whose primary purpose is to invest money provided by its securityholders,

(b) that does not invest for the purpose of exercising effective control, seeking to exercise effective control, or being actively involved in the management of the issuers in which it invests, other than mutual funds or other non-redeemable investment funds, and

(c) that is not a mutual fund;

soliciting business from residents of British Columbia includes

(a) advertising or engaging in promotional activity that is targeted at persons in British Columbia, and

(b) paying any consideration to any person in British Columbia, other than a client or investor, in connection with a trade in a security.

Division B
Interpretation

Definition of security — prescribed instrument

1B1 A membership share of a cooperative under the *Cooperative Association Act* or of a credit union under the *Credit Union Incorporation Act* is a prescribed instrument for the purpose of the definition of security in section 1A1 of the Act.

National instruments

1B2 For the purposes of the Act and rules, if a National Instrument refers to a

reporting issuer, it means *public issuer*, and

salesperson, it means *representative*.

Division C
Accounting and Auditing Principles and Standards

Acceptable Accounting Principles

1C1 A public issuer or a registrant must prepare financial statements in accordance with Canadian GAAP.

Acceptable auditing standards

1C2 (1) If the Act or rules require financial statements to be audited, they must be audited in accordance with Canadian GAAS.

(2) Audited financial statements must be accompanied by an auditor's report prepared in accordance with Canadian GAAS and must

- (a) identify all financial periods presented for which the auditor has issued an auditor's report, and
- (b) refer to any former auditor's report on a comparative period, if the issuer or registrant has changed its auditor and a different auditor has audited one or more of the comparative periods presented in the financial statements.

Acceptable auditors

1C3 (1) An auditor's report must be prepared and signed by a person that is authorized to sign an auditor's report by the laws and professional standards of a jurisdiction of Canada.

(2) An auditor of a public issuer must be subject to the oversight of the Canadian Public Accountability Board.

Measurement and reporting currencies

1C4 (1) A public issuer must disclose the reporting currency in its financial statements.

(2) If the reporting currency is a currency other than the Canadian dollar or United States dollar, a public issuer or registrant must disclose the exchange rate to the Canadian dollar as at the date of the financial statements.

(3) The notes to the financial statements must disclose the measurement currency if it is different from the reporting currency.

Approval of financial statements

1C5 (1) A registrant's board of directors must approve its financial statements required under rule 3B6 *[Annual financial statements]* before they are filed.

(2) A public issuer's board of directors must approve its financial statements required under rules 4C1 *[Annual financial statements]*, 4C3 *[Interim financial statements]*, 5A3 *[Annual audited financial statements]* and 5A5 *[Interim financial statements]* before they are filed.

Audit committee

1C6 (1) A public issuer must have an audit committee of its board of directors.

(2) If a public issuer's governing legislation permits, its board of directors may delegate to its audit committee the approval of interim financial statements required under rule 5A5 *[Interim financial statements]*.

Exemption for Canadian SEC registrants

1C7 Despite sections 1C1, 1C2, and 1C3, a public issuer based in Canada whose securities are registered with the United States Securities and Exchange Commission may

(a) prepare its statements in accordance with the generally accepted accounting principles of the United States,

(b) have those statements audited by a person that is authorized to sign an auditor's report by the laws and professional standards of a jurisdiction of the United States, and

(c) have those statements audited in accordance with the generally accepted auditing standards of the United States.

Securities Act

Part 2 Marketplaces and Market Services Providers

Division A
Authorization Orders

Definitions

2A1 In this Part,

regulation services provider means a marketplace or market services provider that

(a) requires a person to comply with its regulatory instruments as a condition of membership or access to trading facilities, or

(b) performs the function described in paragraph (a) on behalf of a marketplace or market services provider.

Authorization

2A2 (1) On application, the commission may issue an authorization order to a

(a) marketplace, or

(b) market services provider.

(2) Before refusing to grant an authorization order, the commission must provide the applicant with an opportunity to be heard.

(3) Despite section 16A7 *[Public inspection of records]*, an application under subsection (1) is confidential.

Mandatory application

2A3 The commission may require a marketplace or a market services provider to apply for an authorization order.

Conditions and restrictions on authorization

2A4 (1) The commission may impose conditions or restrictions on an authorized marketplace or authorized market services provider.

(2) A marketplace or market services provider must comply with any condition or restriction that applies to it, whether imposed under the authority of this section or otherwise under the Act or rules.

(3) Before the commission imposes any condition or restriction on an authorized marketplace or market services provider, it must give the marketplace or market services provider an opportunity to be heard.

Commission's oversight powers

2A5 (1) The commission may make any decision about an authorized marketplace or market services provider, including a decision about the following:

(a) the marketplace's or market services provider's regulatory instruments;

(b) a decision of a marketplace or market services provider made under its own regulatory instruments;

(c) the business or operations of, or regulatory services provided by, a marketplace or market services provider;

(d) trading or quotation activity on a marketplace; or

(e) a security or class of securities traded or quoted on a marketplace.

(2) The commission may require an authorized marketplace or market services provider to provide information and records to the commission for any purpose under the Act or rules.

(3) An authorized marketplace or market services provider that is the subject of, or any person affected by, a decision in subsection (1) or a requirement in subsection (2) must comply with that decision or requirement.

Surrendering authorization

2A6 (1) If an authorized marketplace or market services provider applies to surrender its authorization, the commission may accept the surrender.

(2) On receiving a request under subsection (1) to surrender an authorization, the commission may, without a hearing, suspend or impose conditions or restrictions on the authorization.

Division B

Authorized Regulation Services Providers

Definitions

2B1 In this division,

authorized regulation services provider means an authorized marketplace or authorized market services provider that is a regulation services provider; and

regulated person means a person who is a member of a market services provider or has access to the facilities of a marketplace.

Powers of authorized regulation services provider

2B2 (1) If its authorization order expressly allows it, an authorized regulation services provider may exercise the powers in sections 2B3 through 2B8 for the purpose of

(a) investigating the conduct of a regulated person or a person who was a regulated person at the time of the conduct being investigated, and

(b) enforcing its own regulatory instruments.

(2) In any particular matter, the commission may, without a hearing, prohibit an authorized regulation services provider from exercising its powers, in whole or in part, under sections 2B3 through 2B8.

Investigator's power to compel evidence

2B3 (1) An investigator appointed by an authorized regulation services provider to investigate the conduct of a person who was a regulated person at the time of the conduct has the same power as the Supreme Court in the trial of a civil action to

(a) summon and enforce the attendance of a witness,

(b) compel a witness to give evidence on oath or in any other manner, and

(c) compel a witness to produce a record or thing.

(2) A witness in an investigation cannot refuse to answer a question on the grounds of self-incrimination or exposure to a penalty or civil proceedings.

(3) Despite section 34(5) *[Financial institution not compellable]* of the *Evidence Act*, no financial institution, as defined in that section of that Act, and no officer or employee of a financial institution, is exempt from the operation of this section.

(4) A witness or party giving evidence at an investigation may be represented by counsel.

Contempt for uncooperative witness

2B4 An authorized regulation services provider may apply to the Supreme Court, and a witness is liable to be committed for contempt as if in breach of a decision of the Supreme Court, if the witness refuses or fails to obey a summons from an investigator under section 2B3 to

(a) attend,

(b) take an oath or give evidence in any other manner,

(c) answer questions, or

(d) produce a record or thing in the custody, possession, or control of the witness.

Authority at hearing

2B5 (1) At a hearing, an authorized regulation services provider has the same power as the Supreme Court in a trial of a civil action to

(a) summon and enforce the attendance of a witness,

(b) compel a witness to give evidence on oath or in any other manner, and

(c) compel a witness to produce record or thing.

(2) A witness cannot refuse to answer an authorized regulation service provider's question on the grounds of self-incrimination or exposure to a penalty or civil proceedings.

(3) Despite section 34(5) *[Financial institution not compellable]* of the *Evidence Act*, no financial institution, as defined in that section of that Act, and no officer or employee of a financial institution, is exempt from the operation of this section.

Committal for contempt

2B6 (1) If a person's conduct in or relating to a hearing permitted or required under an authorized regulation services provider's regulatory instruments would be a contempt if done in or relating to a Supreme Court proceeding, the authorized regulation services provider may apply to the Supreme Court for an order that the person is in contempt.

(2) In a hearing under subsection (1), the person whose conduct is the subject of the application is liable to be committed for contempt as if the person were in breach of an order or judgment of the Supreme Court.

Appointment of receiver, receiver manager, or trustee

2B7 (1) An authorized regulation services provider may apply to the Supreme Court for the appointment of a receiver, receiver manager, or a trustee of all or any part of the property of a regulated person.

(2) On an application under subsection (1), the court may appoint a receiver, receiver manager, or a trustee, if the court is satisfied that is in the best interests of

(a) the regulated person's creditors,

(b) persons whose property is in the possession or under the control of the regulated person, or

(c) investors in, or clients of, the regulated person.

(3) If an authorized regulation services provider considers it necessary, it may apply under this section without notice to any other person, and, if the court considers it necessary it may, without a hearing, make a temporary order under subsection (2) for not more than 15 days.

(4) A receiver, receiver manager, or trustee appointed under this section

(a) is the receiver, receiver manager, or trustee of all or any part of the property belonging to the regulated person or held by the regulated person on behalf of or in trust for any other person, and

(b) may, if authorized by the court, wind up or manage the business of the regulated person and may exercise any power necessary or incidental to the winding up or management.

(5) An order made under this section must direct a person receiving notice of the order to retain all of the property of a regulated person that is within or comes into that person's possession or control, until the receiver, receiver manager, trustee, or the court directs otherwise.

(6) If an authorized regulation services provider requests information or a record from a trustee appointed for a registrant under this section, the trustee must provide the requested information or record to the authorized regulation services provider.

(7) A trustee appointed under this section, the authorized regulation services provider, the regulated person that is the subject of the order appointing the trustee, or any other

interested party may apply to the court at any time during the administration of the trust for an order

(a) discharging the trustee,

(b) appointing another person as the trustee, or

(c) varying the conditions of the trust.

(8) On an application under this section, the court may admit as evidence

(a) any hearsay evidence that the court considers reliable, or

(b) any oral or written statement, record, or report the court considers relevant.

Enforcement of authorized regulation services provider decisions and settlements

2B8 If an authorized regulation services provider

(a) makes a decision after a hearing or enters into a settlement, and

(b) files it with the Supreme Court,

the decision or settlement has the same force and effect, and all proceedings may be taken on it, as if it were a judgment of the Supreme Court.

Immunity of authorized regulation services providers

2B9 No action or other proceeding may be instituted against

(a) an authorized regulation services provider,

(b) a director of an authorized regulation services provider,

(c) an officer or employee of an authorized regulation services provider, or

(d) a person acting under an order, a written or oral direction, or with the consent of an authorized regulation services provider

for an act done or an omission made in exercising the powers under sections 2B3 through 2B8 or in administering the authorized regulation services provider's regulatory instruments, unless the person acted in bad faith.

Division C
Authorized Market Delegates

Delegation to authorized marketplace or market services provider

2C1 The commission may delegate to an authorized marketplace or market services provider any power under

(a) Part 3 *[Registration]*,

(b) Part 4 *[Offerings]*,

(c) Part 5 *[Continuous Disclosure]*,

(d) Part 6 *[Take Over Bids and Issuer Bids]*,

(e) Part 8 *[Mutual Funds]*, or

(f) Part 9 *[Derivative Contracts]*.

Securities Rules

Part 2 Marketplaces and Market Services Providers

There are no rules in this Part.

Securities Act

Part 3 Registration

Division A
General

Registration requirement

3A1 (1) A person must not

(a) trade in a security, or

(b) act as an adviser

unless the person is registered in accordance with the rules.

(2) Subsection (1) does not apply to

(a) a foreign dealer, as defined in Part 7, that complies with that part,

(b) a foreign adviser, as defined in Part 7, that complies with that part, or

(c) a person that is exempted from this part in accordance with the rules.

Division B
Registration Status

Application for registration

3B1 (1) On application, the commission may register an applicant as a dealer or as an adviser.

(2) Before refusing to register an applicant, the commission must give the applicant an opportunity to be heard.

Conditions and restrictions on registrants

3B2 (1) The commission may impose conditions or restrictions on a registrant including, without limiting the generality of the foregoing,

(a) a restriction on the duration of a registration,

(b) a condition on the registrant's arrangement with a representative it has engaged, or

(c) a condition on a representative's trading or advising activity.

(2) A registrant must comply with any condition or restriction that applies to the registrant, whether imposed under the authority of this section or otherwise under the Act or rules.

(3) Before the commission imposes any condition or restriction that applies to a registrant, it must give the registrant an opportunity to be heard.

Conditions and restrictions on representatives

3B3 (1) The commission may impose conditions or restrictions on a representative's engagement with a registrant, including, without limiting the generality of the foregoing,

(a) a restriction on the duration of a representative's engagement with a registrant,

(b) a condition on the registrant's arrangement with the representative it has engaged, or

(c) a condition on a representative's trading or advising activity.

(2) A representative must comply with any condition or restriction that applies to the representative, whether imposed under the authority of this section or otherwise under the Act or rules.

(3) Before the commission imposes any condition or restriction that applies to a representative of a registrant, it must give the representative or registrant an opportunity to be heard.

Surrender of registration

3B4 (1) If a registrant applies to surrender its registration, the commission may accept the surrender.

(2) On receipt of an application to surrender registration, the commission may, without a hearing, suspend or impose conditions or restrictions on the registrant's registration, a representatives's engagement with the registrant, or a representative's trading or advising activities.

Division C
Information Sharing

Information sharing

3C1 (1) In this section, ***registrant*** includes an applicant for registration.

(2) A registrant must provide the information required by this section on the request of any other registrant that is considering whether or not to engage a person as a representative.

(3) The information that a registrant must provide under subsection (2) is all information about the person being considered for engagement as a representative that would reasonably be considered relevant to a decision whether to engage that person as a representative.

(4) A registrant that collects information under the authority of this section can use the information only to make decisions about the engagement of a representative.

(5) A registrant that collects and uses information under the authority of this section can only disclose it to

(a) a regulator,

(b) an authorized regulation services provider that has authority over the registrant,

(c) an entity empowered by the law of a jurisdiction to regulate financial services, other than securities, or

(d) if required by law.

(6) If this section conflicts with the personal information protection legislation, this section prevails.

Securities Rules

Part 3 Registration

Division A
General

There are no rules in this Division.

Division B
Registration Status

Categories of registrant

3B1 (1) The following are the registration categories for a registrant: investment dealer, mutual fund dealer, restricted dealer, or registered adviser.

(2) An investment dealer may

(a) trade in securities, and

(b) advise a client on an investment or trade in a particular security.

(3) A mutual fund dealer may

(a) trade in securities of a mutual fund or in other securities for which registration is not required, and

(b) advise a client on an investment or trade in a security described in paragraph (a).

(4) A restricted dealer may trade in securities and advise a client on a trade in a particular security in accordance with its conditions of registration.

(5) A registered adviser may act as an adviser.

Membership in self-regulatory organization

3B2 An investment dealer must be a member of the Investment Dealers Association of Canada and a mutual fund dealer must be a member of the Mutual Fund Dealers Association of Canada.

Proficiency for representatives of dealers and advisers

3B3 A representative of a registrant must meet the proficiency requirements that the commission specifies.

Application for registration

3B4 (1) An applicant for registration as a dealer or adviser must file an application to register in the required form.

(2) Subrule (1) does not apply to a dealer or adviser that is registered in another Canadian jurisdiction that files evidence of its registration instead of the required form.

Initial capital adequacy calculation

3B5 An applicant for registration as an adviser must file a statement disclosing the amount of capital it considers sufficient to meet its expected business obligations, and a calculation of capital showing that it has capital in at least that amount.

Annual financial statements

3B6 An applicant for registration must file annual financial statements for its 3 most recently completed financial years, or if the applicant has not had 3 complete financial years, for all its financial years.

Audit requirement

3B7 (1) The annual financial statements for the most recent financial year required under rule 3B6 must be audited.

(2) Financial statements required under rule 3B6, other than those for the most recent financial year, may be unaudited, unless audited financial statements have been prepared.

Interim financial statements

3B8 (1) An applicant for registration must file interim financial statements of the applicant for the most recent interim period ended more than 60 days, or within 60 days if available, before the date of the application, and the comparable period in the preceding year.

(2) Despite subrule (1), the interim financial statements may be omitted if the results for the most recent interim period are included in the annual financial statements filed under rule 3B6.

Financial statements of predecessors

3B9 (1) An applicant for registration that has not existed for 3 years must provide, under rule 3B6, the financial statements of any predecessor that carried on the applicant's primary business.

(2) An applicant whose primary business was acquired within 3 years before the date that it files its application must provide, under rule 3B6, the financial statements of the acquired business prior to the acquisition.

Filing information about officers and directors

3B10 An applicant for registration must provide the commission with personal information in the required form about each partner, director, and officer.

Application to authorized market delegate

3B11 (1) If the commission has delegated its registration function for a category of registration to an authorized market delegate, an applicant for registration must file the application and any other related information with the authorized market delegate.

(2) Rules 3B6 through 3B10 do not apply to an applicant for registration under subrule (1) that is subject to the corresponding requirements of its authorized market delegate.

Division C
Information Sharing

There are no rules in this Division.

Division D
Ongoing Requirements for All Registrants

Code of Conduct

3D1 A registered dealer or a registered adviser must comply with, and is responsible for ensuring that its representatives comply with, all the obligations set out in the schedule *[Code of Conduct]*.

Specified authority of representatives

3D2 (1) A registrant must maintain a current record of the trading or advising services each representative is authorized to provide on its behalf.

(2) A registrant must not authorize a representative to provide trading or advising services that are outside the scope of the registrant's registration.

(3) A representative must not provide trading or advising services that are outside the scope of the representative's authorization from the registrant.

Requirements for records

3D3 A registrant must keep records that are reasonably necessary to record its business activities and its clients' transactions, including records that

(a) permit the timely creation and audit of financial statements,

(b) allow the registrant to determine its working capital position at all times,

(c) clearly distinguish client monies and assets, including securities, from monies and assets of the registrant,

(d) identify which client is entitled to which monies and assets,

(e) identify the total number of each security that the registrant and its clients hold, and

(f) identify which transactions were conducted on behalf of which clients, including information to provide an audit trail for each instruction and order received from and for each trade transmitted and executed for a client or by the dealer as principal, in accordance with the requirements of the marketplace or the marketplace's regulation services provider or, if the trade takes place outside a marketplace, in accordance with the requirements of a reputable marketplace or market services provider.

Time for keeping records

3D4 A registrant must keep records of

(a) unexecuted orders and instructions for at least 2 years, and

(b) executed orders and instructions for at least 7 years.

Filing information about officers and directors

3D5 A registrant must provide the commission with personal information in the required form about each partner, director, and officer within 10 days of the appointment of an individual to one of those positions.

Capital adequacy

3D6 A registrant must maintain capital sufficient to meet its business obligations.

Subordination agreement

3D7 If a registrant borrows from its directors, officers, or significant securityholders in order to maintain sufficient capital to meet its business obligations, the registrant and the person from whom the registrant borrowed must enter into a subordination agreement that will ensure that claims of directors, officers, and significant securityholders are subordinated to the claims of the registrant's other creditors and clients.

Canadian registrants based outside British Columbia

3D8 Despite rules 3D2 through 3D7, a registrant and its representatives that are based outside British Columbia and comply with corresponding requirements in another Canadian jurisdiction, are deemed to have complied with rules 3D2 through 3D7.

List of representatives

3D9 A registrant must keep an evergreen list on its public website of the names of all its current representatives that trade or advise in British Columbia.

Registrants subject to requirements of authorized market delegate

3D10 Rules 3D2 through 3D7 do not apply to a registrant that is subject to the corresponding requirements of its authorized market delegate.

Division E
Ongoing Requirements for Advisers

Bonding requirements

3E1 (1) A registered adviser must maintain a financial institution bond for at least $200,000 covering a client's loss as a result of fidelity issues, on-premises loss of property, in-transit loss of property, forgery or alteration, loss resulting from forged, altered, lost, or stolen securities, and counterfeit currency.

(2) Despite subrule (1), if a registered adviser does not

(a) hold a client's funds, cheques, or securities,

(b) have any authority to obtain possession of client's funds or securities, or

(c) have the ability to gain control over a client's funds or securities,

the adviser's bonding coverage need only cover a client's loss as a result of fidelity issues, on-premises loss of property, and in-transit loss of property.

Annual audited financial statements

3E2 A registered adviser must file annual audited financial statements by the 90th day following the end of its last financial year.

Annual review of capital

3E3 A registered adviser must, at the time it files its financial statements under rule 3E2, file a statement disclosing the amount of capital it considers sufficient to meet its expected business obligations, and a calculation of capital showing that it has capital in at least that amount.

Inadequate capital

3E4 A registered adviser must report to the commission immediately if its capital level falls below the amount reported in the latest report filed under rule 3B5 *[Capital adequacy calculation]* or rule 3E3.

Canadian advisers based outside British Columbia

3E5 Despite rules 3E1 through 3E4, a registered adviser and its representatives that are based outside British Columbia and are subject to corresponding ongoing requirements in another Canadian jurisdiction, are deemed to comply with rules 3E1 through 3E4.

Division F
Registration Exemptions

Definitions and interpretation

3F1 (1) In this Part, ***consultant*** of an issuer means a person, other than an employee, senior officer, or director of the issuer, that

(a) is engaged to provide services to the issuer or an affiliate of the issuer, other than services provided in relation to a distribution,

(b) provides the services under a written contract with the issuer or an affiliate of the issuer, and

(c) spends or will spend a significant amount of time and attention on the affairs and business of the issuer or an affiliate of the issuer.

(2) In this division, a person described in paragraph (e) of rule 1A1 *[Definition of accredited investor]* purchasing for a fully managed account is deemed to be acquiring securities as principal.

I. General exemptions to trade

Acquiring securities

3F2 A person is not required to register to acquire securities.

Trades to or through a dealer

3F3 A person is not required to register to trade securities to or through a person registered as a dealer.

Isolated trades

3F4 A person is not required to register to trade securities, if

(a) the trade is an isolated trade, and

(b) the person is not the issuer of the security.

Representatives of registrants

3F5 (1) A person that is a representative of a registered dealer is not required to register to trade securities on behalf of the registered dealer.

(2) A person that is a representative of a registered adviser is not required to register to act as an adviser on behalf of the registered adviser.

Trades to issuer

3F6 A person is not required to register to trade securities to the issuer of the security.

Trades to existing securityholders

3F7 (1) An issuer is not required to register to trade securities to an existing securityholder of the issuer.

(2) Despite subrule (1), an issuer cannot trade securities to an existing securityholder who acquired the issuer's securities only under the exemption in rule 3F11 *[Trades under an offering memorandum]* or rule 3F20 *[Trades under legal authority]*.

Private issuers and their securityholders

3F8 (1) A person is not required to register to trade securities of a private issuer to one of the following permitted purchasers acquiring the security as principal:

(a) a director or officer of the issuer or an affiliate of the issuer;

(b) a family member of a director, officer, or significant securityholder of the issuer or an affiliate of the issuer;

(c) a family member of the spouse of a director, officer, or significant securityholder of the issuer or an affiliate of the issuer;

(d) a close personal friend or close business associate of a director, officer, or significant securityholder of the issuer or affiliate of the issuer;

(e) an employee or consultant of the issuer, or a spouse of one of them;

(f) a non-individual person that is wholly-owned or controlled by an individual person or persons described in paragraph (a), (b), (c), (d), or (e);

(g) a trust or estate of which all the beneficiaries or a majority of the trustees are individual persons described in paragraph (a), (b), (c), (d), or (e);

(h) a family member of the selling securityholder or of the selling securityholder's spouse;

(i) an existing securityholder of the issuer;

(j) an accredited investor;

(k) another person if the trade is made by

 (i) a person acting under the authority of a court, administrative body, will, trust, or statute in the course of enforcing legal obligations or administering the affairs of another person, or

 (ii) a creditor in the course of liquidating a debt; or

(l) the private issuer or an affiliate of the private issuer.

(2) A person holding a security of a private issuer must not trade that security except to a permitted purchaser referred to in subrule (1) that is acquiring the security as principal.

(3) A private issuer must not accept a transfer from a securityholder to a person other than a permitted purchaser referred to in subrule (1) that is acquiring the security as principal.

II. Exemptions for private placements

Trades to exempt purchasers

3F9 (1) An issuer is not required to register to trade its own securities to one of the following persons acquiring the securities as principal:

(a) a director or officer of the issuer or of an affiliate of the issuer;

(b) a family member of a director, officer, or significant securityholder of the issuer or of an affiliate of the issuer;

(c) a family member of the spouse of a director, officer, or significant securityholder of the issuer or of an affiliate of the issuer;

(d) a close personal friend or close business associate of a director, officer, or significant securityholder of the issuer or of an affiliate of the issuer;

(e) an employee or consultant of the issuer, or a spouse of one of them;

(f) a non-individual person that is wholly-owned or controlled by an individual person or persons described in paragraph (a), (b), (c), (d), or (e);

(g) a trust or estate of which all the beneficiaries or a majority of the trustees are individual persons described in paragraph (a), (b), (c), (d), or (e);

(h) a person receiving securities as consideration for vending, to the issuer or an affiliate of the issuer, a non-cash asset that is significant to that person;

(i) a creditor receiving securities to settle a debt; or

(j) a person receiving securities as consideration for a bonus or finder's fee.

Trades to accredited investors

3F10 A person is not required to register to trade its own securities if the purchaser

(a) acquires the security as principal, and

(b) is an accredited investor.

Trades under an offering memorandum

3F11 (1) A restricted issuer or a public issuer is not required to register to trade its own securities if the purchaser is acquiring the security as principal and, before the purchaser commits in writing to purchase the securities, the issuer

(a) delivers an offering memorandum to the purchaser in the required form, and

(b) obtains a risk acknowledgement, in the required form, signed by the purchaser.

(2) An issuer must disclose in an offering memorandum under subrule (1) all material information about the issuer.

(3) An issuer must file an offering memorandum within 10 days of the date it is first delivered to a purchaser under subrule (1).

(4) Subrules (2) and (3) apply to any update of an offering memorandum.

(5) An issuer must hold all consideration received from a purchaser under this rule in trust for the purchaser until the expiry of that purchaser's right to cancel the purchase under section 15A2 of the Act *[Withdrawal right]*.

(6) An issuer must keep each signed risk acknowledgement required under subrule (1) for 6 years following the trade to which it relates.

Trades under the Employee Investment Act

3F12 (1) In this rule, ***employee venture capital corporation***, ***eligible business***, and ***venture capital plan*** have the meanings they are given in the ***Employee Investment Act***.

(2) An employee venture capital corporation registered under the *Employee Investment Act* that invests in accordance with that Act is not required to register to trade its own securities under a venture capital plan to an employee of an eligible business or an employee of an affiliate of an eligible business.

(3) An employee of an eligible business or of an affiliate of an eligible business is not required to register to trade securities of an employee venture capital corporation to another employee of an eligible business or an affiliate of an eligible business.

III. Exemptions for corporate transactions

Trades related to reorganizations and bids

3F13 A person is not required to register to trade securities to effect a reorganization of an issuer, a take over bid, or a business combination.

Trades of public issuer securities as dividend in kind

3F14 An issuer is not required to register to trade securities of a public issuer to an existing securityholder as a dividend in kind.

Trades under direct purchase plans

3F15 A public issuer is not required to register to trade its own securities under a direct purchase plan if

(a) the number of securities distributed under the plan in any one calendar year is no more than 2% of the issuer's outstanding equity securities at the beginning of the year,

(b) the administrator of the plan is a Canadian financial institution, and

(c) no person, other than a registrant under the Act or a representative of the registrant, provides any advice or recommendation about the merits or suitability of the security.

IV. Exemptions for safe securities

Trades in exempt securities

3F16 A person is not required to register to trade

(a) a debt security, or an option to acquire that debt security, issued or guaranteed by the government of Canada or a province or territory of Canada,

(b) a debt security, or an option to acquire that debt security, issued by a country, a political division of a country, a municipal corporation, a Canadian financial institution or equivalent person in another jurisdiction, the International Bank for Reconstruction and Development, the Asian Development Bank, or the Inter-American Development Bank, that a rating agency designated by the commission has rated,

(c) commercial paper issued by a public issuer that matures no more than 12 months after it is issued and that a rating agency designated by the commission has rated, so long as the commercial paper is not convertible or exchangeable into a security other than a security referred to in this section, or

(d) a guaranteed investment issued by a Canadian financial institution whose deposits are insured by an agency of the government of Canada or a province or territory of Canada.

V. *Exemptions for trades in securities otherwise regulated*

Trades in variable insurance contracts

3F17 A person is not required to register to trade a variable insurance contract issued by an insurance company and sold by a person licensed or exempted from licensing under the *Financial Institutions Act*.

Trades in non-syndicated mortgages

3F18 (1) A person is not required to register to trade a mortgage sold under the *Mortgage Brokers Act* if the mortgage is not a syndicated mortgage.

(2) In this section, ***syndicated mortgage*** means a security that provides an investment arrangement in which a person participates, together with another person, as a mortgagee through the acquisition of a portion of a debt obligation that is secured by the mortgage.

Trades in exempt real estate securities

3F19 (1) A person is not required to register to trade an exempt real estate security if the person

(a) complies with the *Real Estate Act*, and

(b) does not market the expected economic benefits of any pooling or management arrangements related to the security.

(2) In this section, ***exempt real estate security*** means an investment arrangement comprising

(a) a direct interest in real property,

(b) an interest in an existing or potential rental pool or management agreement for that property, and

(c) a right to occupy the property for at least 30 days per year.

Trades under legal authority

3F20 A person is not required to register to trade a security if the trade is made by

(a) a person acting under the authority of a court, administrative body, will, trust, or statute in the course of enforcing legal obligations or administering the affairs of another person, or

(b) a creditor in the course of liquidating a debt.

VI. *Exemptions for persons with connections outside British Columbia*

Trades to or through Canadian dealers outside British Columbia

3F21 (1) A dealer registered in another Canadian jurisdiction is not required to register to trade a security on behalf of a client if

(a) the client was the dealer's client before becoming resident in British Columbia, or

(b) the dealer does not solicit business from residents of British Columbia.

Persons and markets outside Canada

3F22 A person is not required to register to trade a security to

(a) a person outside Canada, or

(b) a security of a public issuer through a marketplace outside Canada.

in compliance with applicable securities laws.

Exempt offerings under other Canadian securities law

3F23 A person is not required to register to trade securities if the trade

(a) occurs in both British Columbia and another Canadian jurisdiction, and

(b) is exempt from the registration requirements of the other jurisdiction.

VII. Exemption for restricted issuer resale

Trades by restricted issuer securityholders

3F24 (1) A person holding a security of a restricted issuer is not required to register to trade that security to one of the following permitted purchasers acquiring the security as principal:

(a) a director or officer of the restricted issuer or an affiliate of the restricted issuer;

(b) a non-individual person that is wholly-owned or controlled by an individual person or persons named in paragraph (a), or those individual persons and their family members;

(c) a trust or estate of which all the beneficiaries or a majority of the trustees are persons described in paragraph (a);

(d) a family member of the selling securityholder or of the selling securityholder's spouse;

(e) an existing securityholder of the restricted issuer;

(f) an accredited investor;

(g) the restricted issuer or an affiliate of the restricted issuer;

(h) a person outside British Columbia in compliance with the securities laws of that jurisdiction;

(i) another person in connection with a business reorganization or combination, or a take over bid;

(j) another person if the securityholder is

(i) a person acting under the authority of a court, administrative body, will, trust, or statute in the course of enforcing legal obligations or administering the affairs of another person, or

(ii) a creditor in the course of liquidating a debt.

(2) Despite paragraph (1)(e), a director or officer who is a securityholder cannot trade a security to an existing securityholder who acquired the issuer's securities only under the exemption in rule 3F11 *[Trades under an offering memorandum]* or rule 3F20 *[Trades under legal authority]*.

(3) A person holding a security of a restricted issuer must not trade that security except to a permitted purchaser referred to in subrule (1) or under the exemption in rule 3F12(3) *[Trades under the Employee Investment Act]*.

(4) A restricted issuer must not accept a transfer from a securityholder to a person other than a permitted purchaser referred to in subrule (1) or (3).

VIII. Advising Exemptions

Investment dealer acting as portfolio manager

3F25 A registered investment dealer is not required to register to manage investment portfolios on behalf of clients if it follows the rules of the Investment Dealer's Association of Canada for its members and their representatives that provide portfolio management services.

Canadian advisers outside British Columbia

3F26 A person registered in another Canadian jurisdiction as an adviser is not required to register to advise a client if

(a) the client was the adviser's client before becoming resident in British Columbia,

(b) the adviser does not solicit business from residents of British Columbia, or

(c) the client is a registered dealer or registered adviser.

Schedule

Code of Conduct

1. In this schedule,

SRO means the authorized regulation services provider, as defined in part 2 of the Act, designated by the commission and responsible for the registrant;

underwriter means a registrant that trades securities as principal or agent in connection with a general distribution of securities.

2. Each registered dealer or registered adviser must comply with all the principles in section 4.

3. Each representative of a registered dealer and each representative of a registered adviser must comply with all the principles in section 4, except for principle 7.

4. The following principles apply:

Principle 1 — Integrity and fairness

1. Act fairly, honestly, and in good faith and in the best interests of your client.
2. Exercise the degree of care, diligence, and skill that a reasonably prudent person would exercise in the circumstances.
3. Comply with all relevant laws and regulations that govern you.
4. Do not engage in conduct that would bring the reputation of the securities market into disrepute. Take all reasonable steps to determine whether a client's actions threaten the integrity of the securities market.
5. If a client refuses to comply with regulatory requirements, cease to act on behalf of that client.
6. Do not contract out of any duty or liability you or your firm may have under this Code.

Principle 2 — Dealings with clients

1. Keep clients informed of all facts that a reasonable person would consider important to the business relationship.
2. Provide clients with the information necessary to make informed investment decisions, unless your SRO permits you not to do so.
3. Ensure that clients are provided on a timely basis with the records that a reasonable client would consider important respecting all transactions that you conduct on the client's behalf.
4. Ensure that all disclosure you provide to clients is prepared using plain language and is presented in a format that assists in readability and comprehension.

Principle 3 — Confidentiality

Hold in strict confidence all confidential information acquired in the course of your relationship with clients, unless the client consents to the disclosure, the disclosure is legally required, or the client appears to be engaging in activity that could threaten the integrity of the securities market.

Principle 4 — Proficiency

Maintain the proficiency, skill, and diligence necessary to properly advise and serve clients.

Principle 5 — Know your client and suitability

1. Take all reasonable steps to learn and keep current your knowledge of the essential facts about the identity, reputation, and financial circumstances of each client.
2. Determine the general investment needs and objectives of the client, the client's risk tolerance, and the appropriateness of the recommendations you make to that client. Unless your SRO permits you not to do so, determine the suitability of a proposed purchase or sale for that client or the client's portfolio.
3. If a purchase or sale that a client requests is not suitable, advise the client that it is unsuitable before executing the proposed transaction, unless your SRO permits you not to do so.

Principle 6 — Conflict of interest

1. Resolve all significant conflicts of interest in favour of the client using fair, objective, and transparent criteria. If there is a conflict of interest between clients, use fair, objective, and transparent criteria to resolve those conflicts. In both cases, apply the criteria consistently.
2. Develop conflict of interest procedures and disclose them to the client.
3. Disclose promptly to the client any information that a reasonable client would consider important in determining your ability to provide objective service or advice.
4. When acting as an underwriter, act in the best interests of investors and the securities market. Disclose to investors any direct or indirect relationships between you and the issuer or seller that would lead a reasonable investor to question whether you and the issuer or seller are in fact independent from each other.
5. When providing security analyst services, develop, establish, and enforce conflict of interest policies that adequately address the conflicts of interest that analysts face within your firm.

Principle 7 — Compliance systems

1. Maintain an effective system to ensure compliance with this Code, all applicable regulatory and other legal requirements, and your own internal policies and procedures. Maintain an effective system to manage the risks associated with your business.

2. Ensure that your compliance function possesses the technical competence, adequate resources, independence, and experience necessary for the performance of its functions.
3. Ensure that a representative seeking to work for your firm is suitable for work in the securities industry. Once engaged, ensure that your representative is appropriately supervised.
4. Separate underwriting functions from the firm's trading and advising functions.
5. Separate analyst functions from the firm's underwriting functions.
6. Notify the commission immediately of any significant change in the information relating to your organization or business.
7. Safeguard any client monies you hold and ensure they are used for their intended purpose. Ensure that client monies and assets are clearly identified and segregated, unless your SRO permits you not to do so.

Principle 8 — Client complaints

Create and use adequate procedures for handling client complaints effectively. Disclose complaint procedures to clients.

Securities Act

Part 4 Offerings

Division A
General

Issuance of securities

4A1 (1) An issuer must not trade its own securities to another person unless it is a public issuer.

(2) Subsection (1) does not apply to

(a) a foreign issuer, as defined in Part 7, that complies with that part,

(b) a mutual fund that complies with Part 8,

(c) a person issuing a derivatives contract that complies with Part 9, or

(d) a class of issuers that trade their securities in accordance with the rules.

Division B
Public Issuer Status

Becoming a public issuer

4B1 (1) An issuer may become a public issuer if it

(a) files an AIF that the commission accepts, or

(b) is a reporting issuer or a corresponding person in another Canadian jurisdiction and files a notice.

(2) An issuer is a public issuer if it

(a) has completed a reorganization, take over bid, or business combination in which one of the parties was a public issuer, or

(b) is a member of a class of persons set out in the rules.

(3) An issuer must disclose in an AIF filed under subsection 1(a) all material information about the issuer.

Acceptance of AIF

4B2 (1) The commission may accept an AIF that the issuer files under section 4B1(1)(a).

(2) Before the commission refuses to accept an AIF under subsection (1), it must give the issuer an opportunity to be heard.

Securities Rules

Part 4 Offerings

Division A
General

Permitted sales by private issuers

4A1 Section 4A1(1) of the Act *[Issuance of securities]* does not apply to a private issuer that trades its own securities under rule 3F8 *[Private issuers and their securityholders]*.

Permitted sales by restricted issuers

4A2 Section 4A1(1) of the Act does not apply to a restricted issuer that trades its own securities under

(a) rule 3F7 *[Trades to existing securityholders]*,

(b) rule 3F9 *[Trades to exempt purchasers]*,

(c) rule 3F10 *[Trades to accredited investors]*,

(d) rule 3F11 *[Trades under an offering memorandum]*,

(e) rule 3F12 *[Trades under the Employee Investment Act]*,

(f) rule 3F13 *[Trades related to reorganizations and bids]*,

(g) rule 3F22 *[Persons and markets outside Canada]*, or

(h) rule 3F23 *[Exempt offerings under other Canadian securities law]*.

Permitted sales of other securities

4A3 Section 4A1(1) of the Act does not apply to an issuer that trades its own securities under

(a) rule 3F16 *[Trades in exempt securities]*,

(b) rule 3F17 *[Trades in variable insurance contracts]*,

(c) rule 3F18 *[Trades in non-syndicated mortgages]*, or

(d) rule 3F19 *[Trades in exempt real estate securities]*.

Permitted sales by Canadian reporting issuers

4A4 Section 4A1(1) of the Act does not apply to an issuer that is a reporting issuer in another Canadian jurisdiction and that trades its own securities to a person in British Columbia in compliance with the requirements of that jurisdiction that correspond to

(a) rule 3F7 *[Trades to existing securityholders]*,

(b) rule 3F9 *[Trades to exempt purchasers]*,

(c) rule 3F10 *[Trades to accredited investors]*,

(d) rule 3F11 *[Trades under an offering memorandum]*, or

(e) rule 3F13 *[Trades related to reorganizations and bids]*,

and the issuer

(f) applies the corresponding requirements of that jurisdiction to securityholders resident in British Columbia as if they were resident in that other Canadian jurisdiction, and

(g) files any offering document used in British Columbia.

Division B
Public Issuer Status

Issuer listed on TSX Venture

4B1 For the purpose of section 4B1 of the Act *[Becoming a public issuer]*, an issuer is a public issuer if it has at any time had its own securities traded on TSX Venture Exchange, or any of its predecessors.

Required form of AIF

4B2 For the purpose of section 4B1(1)(a) of the Act, an issuer must file an AIF in the required form.

Documents instead of required form of AIF

4B3 For the purpose of section 4B1(1)(a) of the Act, an issuer may file one of the following forms instead of the form of AIF required under rule 4B2:

(a) a share exchange take over bid circular or business combination information circular prepared in accordance with the Act and rules;

(b) a prospectus, share exchange take over bid circular, or business combination information circular that is prepared in accordance with the securities laws of another Canadian jurisdiction;

(c) a public offering or disclosure document prepared under the securities laws of a designated jurisdiction as defined in Part 7 of the Act.

Delivery on request of initial AIF

4B4 An issuer must send a copy of an AIF filed under section 4B1(1)(a) of the Act as soon as practicable and without charge to any person who requests it.

Use of a due diligence provider

4B5 An issuer that files an AIF under section 4B1(1)(a) of the Act must retain a due diligence provider when preparing that AIF to

(a) conduct a reasonable investigation of the business, affairs, and securities of the issuer, and

(b) provide a written opinion to the issuer that there are reasonable grounds to believe that the disclosure in the AIF contains all material information about the issuer.

Initial requirements for due diligence provider

4B6 (1) The commission must accept a person as a due diligence provider before the person can act as one.

(2) Subrule (1) does not apply to an investment dealer or registered adviser.

Reporting issuer in other Canadian jurisdiction

4B7 For the purpose of section 4B1(1)(b) of the Act, an issuer described in that section must file a notice stating that it intends to become a public issuer and the date on which it will begin complying with the relevant requirements of the Act and rules.

Division C
Initial AIF Financial Statements

Annual financial statements

4C1 (1) An AIF filed under section 4B1(1)(a) of the Act *[Becoming a public issuer]* must include annual financial statements of the issuer for its 3 most recently completed financial years or, if the issuer has not completed 3 financial years, for all of its financial years.

(2) Despite subrule (1), if the issuer changed its financial year-end during any of the years in subrule (1), and the resulting transition year is at least 9 months, the AIF may include financial statements for the transition year instead of one of the years in subrule (1).

Audit requirement

4C2 (1) The annual financial statements for the most recent financial year required under rule 4C1 must be audited.

(2) Financial statements required under rule 4C1, other than those for the most recent financial year, may be unaudited, unless audited financial statements have been prepared.

Interim financial statements

4C3 (1) An AIF filed under section 4B1(1)(a) of the Act must include interim financial statements of the issuer for the most recent interim period ended more than 60 days, or within 60 days if available, before the date of the AIF, and the comparable period in the preceding year.

(2) Despite subrule (1), the interim financial statements may be omitted if the results for the most recent interim period are included in the annual financial statements filed under rule 4C1.

Financial statements of predecessors

4C4 (1) An issuer that files an AIF in the required form under section 4B1(1)(a) of the Act and that has not existed for 3 years must provide, under rule 4C1, the financial statements of any predecessor that carried on the issuer's primary business.

(2) An issuer whose primary business was acquired within 3 years before the date that it files its AIF under section 4B1(1)(a) of the Act must provide, under rule 4C1, the financial statements of the acquired business prior to the acquisition.

Division D
Restricted Issuer Reporting

Annual sales report

4D1 If a restricted issuer trades its own securities under

(a) rule 3F7 *[Trades to existing securityholders]*,

(b) rule 3F9 *[Trades to exempt purchasers]*,

(c) rule 3F10 *[Trades to accredited investors]*,

(d) rule 3F11 *[Trades under an offering memorandum]*,

(e) rule 3F22 *[Persons and markets outside Canada]*, or

(f) rule 3F23 *[Exempt offerings under other Canadian securities law]*,

the issuer must file a report in the required form no later than 30 days after the end of the issuer's financial year.

Division E
Subsequent Offerings

Filing offering document

4E1 A public issuer must file a copy of any offering document used in connection with an offering within 10 days of the date it is first delivered to an investor.

Securities Act

Part 5 Continuous Disclosure

Division A
Periodic Disclosure

Public issuer periodic disclosure

5A1 A public issuer must make periodic disclosure in accordance with the rules.

Division B
Timely Disclosure

Disclosure of all material information

5B1 If at any time the continuous disclosure record of a public issuer does not contain all material information about the issuer and its securities, the issuer must issue and file a news release containing the material information as soon as practicable in accordance with the rules.

Business judgment rule

5B2 An issuer, and an officer or director responsible for disclosure of material information, does not contravene section 5B1 if the officer or director exercised reasonable business judgment based on the information that was available to the officer or director at the time of determining whether information was material information.

Division C
Insider Reports

Interpretation

5C1 In this section, ***security of a public issuer*** includes a security issued by any person if the value or market price of the security varies materially with the value or market price of a security of the public issuer.

Initial insider report

5C2 An insider who owns, or controls or directs the voting or trading of, securities of a public issuer must file an insider report in the required form in accordance with the rules.

Subsequent insider report

5C3 If an insider's ownership of, or control or direction over the voting or trading of, securities of a public issuer changes, the insider must file an insider report in accordance with the rules.

Division D
Significant Securityholder Reports

Initial significant securityholder report

5D1 A person who becomes a significant securityholder must file a significant securityholder report in accordance with the rules.

Subsequent significant securityholder report

5D2 If a significant securityholder's ownership of, or control or direction over the voting or trading of, securities of a public issuer changes, the significant securityholder must file a report in accordance with the rules.

Division E
Further Information for Commission and Securityholders

Continuous disclosure review

5E1 A public issuer must deliver to the commission any information or document the commission requests in connection with its review of the issuer's continuous disclosure record.

Division F
Ceasing to be a Public Issuer

Surrendering public issuer status

5F1 (1) A public issuer ceases to be a public issuer if

(a) its outstanding securities

(i) are owned by not more than 50 persons, counting any 2 or more joint registered owners as one owner and excluding those who acquired securities while employed by the issuer or its affiliates, and

(ii) are not traded through any marketplace, and

(b) it files a notice stating the facts described in paragraph (a) and specifying a date, at least 10 days after the date it files the notice, when it will cease to be a public issuer.

(2) An issuer that satisfies the conditions in subsection (1) ceases to be a public issuer on the date specified in the notice.

Securities Rules

Part 5 Continuous Disclosure

Division A
Periodic Disclosure

Definition

5A1 In this division, ***venture issuer*** means a public issuer that, at the end of its most recently completed financial year, did not have any of its securities listed or quoted on any of the Toronto Stock Exchange, the New York Stock Exchange, the American Stock Exchange, the NASDAQ National Market, the NASDAQ SmallCap Market, or a marketplace outside Canada and the United States of America.

AIF filing

5A2 (1) A public issuer must file an AIF in the required form within the time set out in rule 5A4 for filing its annual financial statements.

(2) In an AIF filed under subrule (1), the issuer must disclose all material information about the issuer and its securities.

(3) A public issuer may file an AIF in the form required by the corresponding requirements of another Canadian jurisdiction instead of an AIF in the required form.

Annual audited financial statements

5A3 A public issuer must file annual audited financial statements.

Filing deadline for annual audited financial statements

5A4 The annual financial statements and auditor's report must be filed,

(a) for a public issuer other than a venture issuer, by the 90th day following the end of its last financial year, or

(b) for a venture issuer, by the 120th day following the end of its last financial year.

Interim financial statements

5A5 A public issuer must file interim financial statements for the interim periods of its current financial year.

Filing deadline for interim financial statements

5A6 The interim financial statements in rule 5A5 must be filed,

(a) for a public issuer other than a venture issuer, by the 45th day after the end of the interim period, or

(b) for a venture issuer, by the 60th day after the end of the interim period.

Filing in a foreign jurisdiction

5A7 Despite rules 5A4 and 5A6, a public issuer must file its financial statements by the date they are filed in a foreign jurisdiction if that date is earlier than the filing deadlines in rules 5A4 or 5A6.

Financial statements of new public issuers

5A8 (1) A new public issuer must file financial statements for its first interim period and its first annual period immediately following the interim and annual periods covered by the financial statements in the document that resulted in the issuer becoming a public issuer.

(2) Despite any other provision in this part, where subrule (1) requires a public issuer to file financial statements for a year or period that ended before the issuer became a public issuer, the issuer must file the statements by the later of 20 days after the issuer became a public issuer or the applicable filing deadline in rules 5A4, 5A6, or 5A7.

(3) Subrules (1) and (2) do not apply to an issuer that was previously a reporting issuer elsewhere in Canada or that became a reporting issuer because the commission designated it as a reporting issuer.

Change of auditor

5A9 (1) If a public issuer changes auditors, it must, as soon as practicable following the change,

(a) prepare and deliver to its former and successor auditors a report describing the reasons for the change, including any reason related to the content or presentation of the issuer's financial statements, and

(b) issue and file a news release disclosing the change of auditor.

(2) If a former or successor auditor believes the issuer's report fails to fairly and fully state the reasons for the change, it must file a letter notifying the commission of the deficiency.

(3) This rule does not apply to a change of auditor required by legislation or resulting from a reorganization, take over bid or business combination.

Change of status report

5A10 A public issuer must file a notice promptly after the occurrence of either of the following:

(a) the public issuer becomes a venture issuer; or

(b) the public issuer is no longer a venture issuer.

Annual report of sales of securities

5A11 A public issuer must file an annual report in the required form of all securities sold during a financial year by no later than 30 days after the financial year end.

Exemption for issuers filing periodic disclosure in other Canadian jurisdictions

5A12 A public issuer is not required to comply with rules 5A2 through 5A10 if it

(a) complies with the corresponding requirements in another Canadian jurisdiction,

(b) files the documents it is required to file under the corresponding requirements of that jurisdiction, and

(c) sends documents to securityholders in British Columbia at the same time and in the same manner as it is required to under the corresponding requirements of that jurisdiction.

Division B
Timely Disclosure

Material information disclosure

5B1 (1) A public issuer is exempt from section 5B1 of the Act *[Public issuer periodic disclosure]* for so long as, in the issuer's reasonable opinion,

(a) the disclosure required by that section would be unduly detrimental to its interests, and

(b) the circumstances that justify non-disclosure of the material information are temporary.

(2) The exemption in subrule (1) is only available if the issuer files, as soon as practicable, a confidential material information report describing

(a) the material information the issuer would have disclosed in its news release had it made disclosure under section 5B1 of the Act, and

(b) the reasons why disclosure would be unduly detrimental to its interests.

Exemption for issuers filing timely disclosure in other Canadian jurisdictions

5B2 A public issuer is not required to file a news release under section 5B1 of the Act if it files the corresponding documents under the requirements in another Canadian jurisdiction.

Division C
Insider Reports

Definition

5C1 For the purpose of this division, ***issuer event*** means a stock dividend, stock split, consolidation, amalgamation, reorganization, merger, or other similar event that affects all holdings of a class of securities of an issuer in the same manner, on a per security basis.

Time periods for filing insider reports

5C2 (1) For the purpose of section 5C2 of the Act *[Initial insider report]*, an insider must file the report in the required form within 10 days after becoming an insider.

(2) For the purpose of section 5C3 of the Act *[Subsequent insider report]*, an insider must file the report in the required form within 10 days after the change occurs, unless the change results from a trade described in subrule (3) or (5).

(3) If an insider acquires securities of a public issuer under a plan providing for automatic acquisitions that do not involve the insider's discretion, the insider must report that acquisition in the required form

- (a) within 90 days of the end of the calendar year in which it occurred, or
- (b) if the insider subsequently traded the securities during the calendar year in which the insider acquired them, within the prescribed period for reporting that trade.

(4) Despite subrule (3), if an insider acquires securities for an additional lump sum payment under a provision of an automatic plan, the insider must report that trade in accordance with subrule (2).

(5) If an insider's ownership of, or control or direction over the voting or trading of, securities of a public issuer changes because of an issuer event, the insider may report that change when it next files a report under subrule (2).

Issuer list of insiders

5C3 (1) An issuer must file a list of its insiders as soon as practicable after becoming a public issuer.

(2) A public issuer must file an amended list of its insiders as soon as practicable after there is a change in the information in the list filed under subrule (1).

Division D
Significant Securityholder Reports

Definition

5D1 In this division, ***eligible institutional investor*** means:

- (a) a person referred to paragraphs (a) and (g) of the definition of ***accredited investor***;
- (b) a registered dealer or registered adviser purchasing for an account fully managed by it, or an equivalent person in another jurisdiction;
- (c) a public mutual fund or equivalent person in another jurisdiction.

Time periods for filing significant securityholder reports

5D2 (1) For the purpose of section 5D1 of the Act *[Initial significant securityholder report]*, a significant securityholder must file the report in the required form within 10 days after becoming a significant securityholder.

(2) For the purpose of section 5D2 of the Act *[Subsequent significant securityholder report]*, a significant securityholder must file the report in the required form within 10 days

after the change occurs, unless the change results from a trade described in subrule (3) or (5).

(3) If a significant securityholder acquires securities of a public issuer under a plan providing for automatic acquisition that does not involve the significant securityholder's discretion, the significant securityholder must report that acquisition in the required form

(a) within 90 days of the end of the calendar year in which it occurred, or

(b) if the significant securityholder subsequently traded the securities during the calendar year in which the significant securityholder acquired them, within the prescribed period for reporting that trade.

(4) Despite subrule (3), if a significant securityholder acquires securities for an additional lump sum payment under a provision of an automatic plan, the significant securityholder must report that trade in accordance with subrule (2).

(5) If a significant securityholder's ownership of, or control or direction over the voting or trading of, securities of a public issuer changes because of an issuer event, the significant securityholder may report that change when it next files a report under subrule (2).

Exemptions from the requirement to file significant securityholder report

5D3 (1) Section 5D1 of the Act does not apply to

(a) an insider, or

(b) an eligible institutional investor if the investor files a report in the required form within 10 days after the month in which, as at the end of the month,

(i) the investor first became a significant securityholder, or

(ii) the investor held 10% or more of the issuer's outstanding voting securities and the balance of the investor's holdings at month end was different from the balance at the previous month end.

(2) An eligible institutional investor, or its affiliate or associate, may, for purposes of this part, treat securities it owns or controls through a business unit separately from securities it owns or controls through any other business unit if

(a) each business unit makes all the decisions about owning or voting the securities it owns or controls,

(b) no business unit acts jointly or in concert with any other business unit with respect to the securities,

(c) no person is involved in making a decision about owning or voting securities for more than one business unit, except to prepare research reports or comply with legal or other policies or requirements, and

(d) the eligible institutional investor, affiliate, or associate discloses in any document it files under this division that it is relying on this rule and what that means, and keeps a record of the business units that are treated separately.

(3) If an eligible institutional investor, or its affiliate or associate, exercises or shares control over an investment fund, the eligible institutional investor, affiliate, or associate may, for purposes of this division, treat securities the fund owns or controls separately from other securities the eligible institutional investor, affiliate, or associate owns or controls, if

(a) a portfolio adviser manages the investment fund on behalf of the eligible institutional investor under a written agreement,

(b) the portfolio adviser is identified as managing the investment fund in a document provided to investors,

(c) none of the eligible institutional investor, its affiliates or associates, or any of their directors, officers, partners, or employees is involved in making decisions about owning or voting securities for more than one business unit, except to prepare research reports or comply with legal or other policies or requirements,

(d) the portfolio adviser neither controls nor is controlled by the eligible institutional investor or any of its affiliates or associates, and

(e) the eligible institutional investor, affiliate, or associate discloses in any document it files under this division that it is relying on this rule and what that means, and keeps a record of the funds whose ownership of or control over securities is treated separately.

5D4 A significant securityholder is not required to comply with section 5D1 of the Act if it complies with the corresponding requirements of another Canadian jurisdiction.

Division E
Further Information for Commission and Securityholders

Personal information of directors, officers, and significant securityholders

5E1 (1) A director, an officer, and a significant securityholder of a public issuer must file a copy of any personal information form it files with a Canadian marketplace at the same time it files with the Canadian marketplace.

(2) If a public issuer is not listed on a Canadian marketplace, a director, an officer, and a significant securityholder of that issuer must file personal information in the required form within 10 days of

(a) becoming a director, officer, or significant securityholder of that issuer, and

(b) a change to the information in the originally filed form that would be important to a reasonable investor in making an investment decision.

Filing documents sent to securityholders or other agencies

5E2 (1) A public issuer must file a record containing material information about the issuer or its securities that it

(a) sends to its securityholders, or

(b) files with a marketplace, a market services provider, or a regulator

if the record contains information that is not already filed with the commission, whether in the same or a different form.

(2) A reporting issuer must file a record under subrule (1) within 7 days after the issuer

(a) sends the record to its securityholders, or

(b) files the record with a person referred to in paragraph (1)(b).

Delivery of documents to securityholders

5E3 A public issuer must send a copy of a document in its continuous disclosure record as soon as practicable and without charge to a securityholder who requests it.

Disclosure to investors about receiving continuous disclosure documents

5E4 A public issuer must disclose in an AIF or information circular required under the Act or rules that a copy of any document in its continuous disclosure record is available to any securityholder on request, without charge, including a copy of financial statements.

Division F
Ceasing to be a Public Issuer

There are no rules in this Division.

Division G
Advertising

Advertising by an issuer

5G1 An issuer is not required to register to trade when it advertises about its own securities, if the advertisement

(a) identifies that it is an advertisement,

(b) states whether the issuer's securities are listed or unlisted, or that trading in its securities is restricted, and

(c) directs the public to the issuer's continuous disclosure record, if applicable, and any current offering document, if any.

Securities Act

Part 6 Take Over Bids and Issuer Bids

This publication does not include the legislation relating to take over bids and issuer bids. See Commentary, Part 6.

Securities Rules

Part 6 Take Over Bids and Issuer Bids

This publication does not include the rules relating to take over bids and issuer bids. See Commentary, Part 6.

Securities Act

Part 7 Foreign Market Participants

Division A
Definitions

Definitions

7A1 In this part,

designated jurisdiction means a jurisdiction that the commission designates for the purposes of this part;

exempt foreign issuer means a public issuer that is a foreign issuer with status corresponding to a public issuer in a designated jurisdiction;

foreign adviser means an adviser based outside Canada that is authorized to act as an adviser by a foreign regulator;

foreign dealer means a dealer based outside Canada that is authorized to act as a dealer by a foreign regulator;

foreign fund company means a fund company that manages a foreign mutual fund and is regulated by a foreign regulator;

foreign issuer means an issuer, other than a mutual fund, whose principal market is outside Canada;

foreign mutual fund means a mutual fund whose securities are traded primarily outside Canada;

foreign regulator means an entity empowered by the laws of a jurisdiction outside Canada to regulate trading in securities;

limited connection foreign issuer means a foreign issuer that has less than 10% of its equity securities held by residents of Canada;

principal market means

(a) for an issuer based in Canada whose securities trade on a marketplace in Canada,

  (i) the marketplace in Canada, or

  (ii) a foreign marketplace chosen by the issuer with more than 60% of the annual trading volume of the issuer's securities over each of its 3 most recent financial years, and

(b) for any other issuer, the marketplace with the largest annual trading volume in the issuer's securities averaged over its 3 most recent financial years.

Division B
Foreign Dealers and Advisers

Classes of foreign dealers and advisers

7B1 The commission may classify a class of dealers or a class of advisers to be foreign dealers or foreign advisers, and may impose different requirements in the rules to apply to different classes of foreign dealers and foreign advisers.

Division C
Foreign Issuers

Becoming an exempt foreign issuer

7C1 A foreign issuer that is regulated by a foreign regulator in a designated jurisdiction may become a public issuer by filing

(a) the required form, and

(b) either

(i) the documents that it has filed under the securities laws of its designated jurisdiction in the preceding 12 month period, or

(ii) a notice to the effect that the documents referred to in subparagraph (i) have been filed on the Internet and are available on a reasonably continuous basis with instructions on how to locate the documents.

Classes of foreign issuers

7C2 The commission may classify a class of issuers to be foreign issuers and may impose different requirements in the rules to apply to different classes of foreign issuers.

Division D
Foreign Mutual Funds and Foreign Fund Companies

Classes of foreign mutual funds and fund companies

7D1 The commission may classify a class of mutual funds or fund companies to be foreign mutual funds or foreign fund companies and may impose different requirements in the rules for different classes of foreign mutual funds or foreign fund companies.

Part 7 Foreign Market Participants

Division A
Definitions

There are no rules in this Division.

Division B
Foreign Dealers and Advisers

Exemption for foreign dealers

7B1 A foreign dealer is not required to register to trade securities if

(a) the trade is with or on behalf of a person who is a resident of British Columbia and who was the foreign dealer's client before the person became a resident of British Columbia, or

(b) the foreign dealer does not solicit business from residents of British Columbia and provides disclosure in the required form to any person who is a resident of British Columbia before the first time the foreign dealer trades securities with or on behalf of that person.

Exemption for foreign advisers

7B2 A foreign adviser is not required to register to act as an adviser if

(a) it advises a person who is a resident of British Columbia and who was the foreign adviser's client before the person became a resident of British Columbia,

(b) the foreign adviser does not solicit business from residents of British Columbia and provides disclosure in the required form to any person who is a resident of British Columbia before the first time the foreign adviser advises that person, or

(c) it advises a registered dealer or registered adviser.

Exemption from filing requirements

7B3 A foreign adviser that is also registered as an adviser under this Act is exempt from rules 3D2 through 3D7, rule 3D9, and rules 3E1 through 3E4 if it is subject to corresponding requirements in the jurisdiction where the adviser is based.

Division C
Foreign Issuers

Exemptions for exempt foreign issuers

7C1 (1) An exempt foreign issuer is not required to comply with Part 4 or Part 5 of the Act or related rules if it

(a) files either

(i) the documents it is required to file under the securities laws of its designated jurisdiction, together with the required form, or

(ii) a notice to the effect that the documents referred to in subparagraph (i) have been filed on the Internet and are available on a reasonably continuous basis, with instructions on how to locate the documents, together with a notice in the required form,

(b) sends documents to securityholders in British Columbia at the same time and in the same manner as it is required to send them under the securities laws of its designated jurisdiction,

(c) sends a continuous disclosure document, without charge, to any securityholder in British Columbia who requests it, and

(d) includes in the offering document a notice in the required form and files any offering document used for purchasers in British Columbia.

(2) An exempt foreign issuer is not required to comply with Division C of Part 1 *[Accounting and Auditing Principles and Standards]* if the issuer complies with the corresponding requirements in its designated jurisdiction.

(3) A securityholder of an exempt foreign issuer is not required to comply with Division D *[Insider Reports]* or Division E *[Significant Securityholder Reports]* of Part 5 of the Act *[Continuous Disclosure]* and related rules, if the securityholder complies with the corresponding requirements, if any, in its designated jurisdiction.

(4) A person making a take over bid for an exempt foreign issuer is not required to comply with Part 6 of the Act *[Take Over Bids and issuer bids]* and related rules if

(a) it complies with the corresponding requirements in the exempt foreign issuer's designated jurisdiction,

(b) it files either

(i) documents required to be filed under the requirements in subrule (a), and, if the bid is a share exchange bid, a notice in the required form, or

(ii) a notice to the effect that the documents referred to in subparagraph (i) have been filed on the Internet and are available on a reasonably continuous basis, with instructions on how to locate the documents and, if the bid is a share exchange bid, a notice in the required form, and

(c) it applies corresponding requirements in the exempt foreign issuer's designated jurisdiction as if securityholders resident in British Columbia were resident in the designated jurisdiction.

Multiple designated jurisdictions

7C2 For the purposes of this part, if an exempt foreign issuer files information in more than one designated jurisdiction, the issuer may choose which jurisdiction will be its designated jurisdiction.

Exemptions for limited connection foreign issuers

7C3 (1) A public issuer that is a limited connection foreign issuer is not required to comply with Part 5 of the Act *[Continuous Disclosure]* or related rules if it

(a) files either

(i) the documents required to be filed under the securities laws of the jurisdiction of its principal market, together with the required form, or

(ii) a notice to the effect that the documents referred to in subparagraph (i) have been filed on the Internet and are available on a reasonably continuous basis, with instructions on how to locate the documents, together with a notice in the required form,

(b) sends documents to securityholders in British Columbia at the same time and in the same manner as it is required to under the securities laws of the foreign jurisdiction, and

(c) sends continuous disclosure documents prepared under the securities laws of the foreign jurisdiction, without charge, to any securityholder in British Columbia who requests them.

(2) A limited connection foreign issuer is exempt from Division C of Part 1 *[Accounting and Auditing Principles and Standards]* if the issuer follows the corresponding requirements in the jurisdiction of its principal market.

(3) A securityholder of a public issuer that is a limited connection foreign issuer is not required to comply with Division D *[Insider Reports]* or Division E *[Significant Securityholder Reports]* of Part 5 of the Act *[Continuous Disclosure]* and related rules if the securityholder follows the corresponding requirements, if any, in the jurisdiction of the issuer's principal market.

(4) A person making a take over bid for a public issuer that is a limited connection foreign issuer is not required to comply with Part 6 of the Act *[Take Over Bids and Issuer Bids]* and related rules if

(a) it follows the corresponding requirements in the jurisdiction of the issuer's principal market,

(b) it files either

    (i) the documents required to be filed under the corresponding requirements of the securities laws of the jurisdiction of the issuer's principal market and, if the bid is a share exchange bid, the required form, or

    (ii) a notice to the effect that the documents referred to in subparagraph (i) have been filed on the Internet and are available on a reasonably continuous basis, with instructions on how to locate the documents and, if the bid is a share exchange bid, a notice in the required form, and

(c) it applies the corresponding requirements in the jurisdiction of the issuer's principal market as if securityholders resident in British Columbia were resident in the foreign jurisdiction.

Limitations on foreign issuer offerings

7C4 A limited connection foreign issuer is exempt from section 4A1 of the Act *[Issuance of securities]* if it trades its own securities only in compliance with the requirements of

(a) rule 3F7 *[Existing securityholders]*,

(b) rule 3F9 *[Exempt purchasers]*,

(c) rule 3F10 *[Accredited investors]*,

(d) rule 3F11 *[Offering memorandum]*, or

(e) rule 3F13 *[Reorganizations and bids]*,

and the issuer

(f) applies the requirements in the jurisdiction of the issuer's principal market as if securityholders resident in British Columbia were resident in that jurisdiction,

(g) files any offering document used in British Columbia, and

(h) includes in an offering document a notice in the required form.

Division D
Foreign Fund Companies

Exemption for foreign mutual funds and foreign fund companies

7D1 A foreign mutual fund or a foreign fund company is not required to register or comply with Part 8 *[Mutual Funds]* of the Act and related rules, if the foreign fund company does not solicit business from residents of British Columbia and provides disclosure in the required form to any person who is a resident of British Columbia before the first time the foreign fund company trades securities of the foreign mutual fund with or on behalf of that person.

Division E
General

Filing in English

7E1 If a document that is filed under this part is not written in English, it must be accompanied by an English translation.

Filing documents that have been sent

7E2 (1) An exempt foreign issuer or a limited connection foreign issuer that is a public issuer must file a record containing material information about the issuer or its securities that it

(a) sends to its securityholders, or

(b) files with a marketplace, a market services provider, or the foreign regulator in its designated jurisdiction

if the record contains information that is not already filed with the commission, in the same or a different form.

(2) The issuer must file the record in subrule (1) within 7 days after the issuer

(a) sends the record to its securityholders, or

(b) files the record with a person referred to in subrule (1)(b).

Securities Act

Part 8 Mutual Funds

Division A
General

Offerings of mutual fund securities

8A1 (1) A mutual fund must not trade its own securities to another person unless it is a public mutual fund.

(2) Subsection (1) does not apply to

(a) a foreign mutual fund, as defined in Part 7, that complies with that part, or

(b) a class of mutual funds that trades its own securities in accordance with the rules.

Division B
Public Mutual Funds

Becoming a public mutual fund

8B1 (1) A mutual fund may become a public mutual fund if it

(a) files an initial disclosure document that the commission accepts, or

(b) is a reporting issuer in another Canadian jurisdiction and files a notice in the required form.

(2) A mutual fund is a public mutual fund if it

(a) has completed a reorganization, take over bid, or business combination in which one of the parties was a public mutual fund, or

(b) is a member of a class of persons set out in the rules.

(3) A mutual fund must disclose in the initial disclosure document filed under subsection 1(a) all material information about the mutual fund and its securities.

Acceptance of disclosure document

8B2 (1) The commission may accept a disclosure document that the mutual fund files under section 8B1(1)(a).

(2) Before the commission refuses to accept a disclosure document under subsection (1), it must give the mutual fund an opportunity to be heard.

Disclosure of significant information

8B3 If at any time the continuous disclosure record of a public mutual fund does not contain all significant information about the mutual fund and its securities, the mutual fund must issue and file a news release containing the significant information as soon as practicable in accordance with the rules.

Business judgment rule

8B4 A mutual fund, and an officer or director responsible for disclosure of significant information, does not contravene section 8B3 if the officer or director exercised reasonable business judgment based on the information that was available to the officer or director at the time of determining whether information was significant information.

Periodic disclosure

8B5 A public mutual fund must make periodic disclosure in accordance with the rules.

Product regulation

8B6 A public mutual fund must comply with other requirements set out in the rules.

Securities Rules

Part 8 Mutual Funds

Division A
General

Definitions

8A1 In this part, ***restricted mutual fund*** means a mutual fund that is not a public mutual fund or a foreign mutual fund.

Permitted offerings by restricted mutual funds

8A2 Section 8A1(1) of the Act does not apply to a restricted mutual fund that trades its own securities only in compliance with the requirements of

(a) rule 3F7 *[Existing securityholders]*,

(b) rule 3F10 *[Accredited investors]*,

or to

(c) an employee, consultant, director, or officer of the mutual fund's fund company, its affiliates, or portfolio manager, or

(d) a client of a registered portfolio manager that manages the fund and invests the client's assets in the fund to provide discretionary money management services.

Exemption for restricted mutual funds

8A3 A restricted mutual fund that complies with rule 8A2 is not required to register to trade its own securities, nor is it required to comply with Part 8 of the Act and related rules.

Resale of restricted mutual fund securities

8A4 A holder of securities of a restricted mutual fund can only trade the securities to the mutual fund.

Division B
Public Mutual Fund Status

This publication does not include the rules relating to public mutual fund requirements. See Commentary, Part 8.

Division A
Exchange Contracts

Exchange contracts exempt from requirements of Parts 4, 5, and 6

9A1 A person that issues or trades an exchange contract is exempt from the requirements in Part 4 *[Offerings]*, Part 5 *[Continuous Disclosure]*, and Part 6 *[Take Over Bids and Issuer Bids]*.

Trading on an exchange in British Columbia

9A2 A person must not trade in an exchange contract on an exchange in British Columbia unless the exchange has been granted an authorization order under Part 2 *[Marketplaces and Market Services Providers]*.

Trading on an exchange outside British Columbia

9A3 A registrant must not trade in an exchange contract as agent for another person on an exchange outside British Columbia unless the commission has designated the exchange.

Division B
Over the Counter Derivative Contracts

Offerings of over the counter derivative contracts

9B1 (1) A person must not trade a derivative contract that is traded over the counter to another person.

(2) Subsection (1) does not apply to a trade in a derivative contract in accordance with the rules.

Part 9 Derivative Contracts

Division A
Exchange Contracts

There are no rules in this division.

Division B
Over the Counter Derivative Contracts

Definitions

9B1 In this part,

OTC derivative contract means a derivative contract that is not an exchange contract; and

qualified party means any of the following:

(a) a person referred to in paragraph (a), (b), (e), (f), (g), or (j) of the definition of accredited investor;

(b) a mutual fund or non-redeemable investment fund if each investor in the fund is a qualified party;

(c) a mutual fund, if the investment portfolio of the fund is managed by a person that is registered under the Act or the securities laws of another Canadian jurisdiction as an adviser or equivalent;

(d) a non-redeemable investment fund, if the investment portfolio of the fund is managed by a person that is registered under the Act or the securities laws of another Canadian jurisdiction as an adviser or equivalent;

(e) a person that buys, sells, trades, produces, markets, brokers, or otherwise uses a commodity in its business and that enters into an OTC derivative contract, provided that a material component of the underlying interest of the OTC derivative contract is

  (i) a commodity that the person buys, sells, trades, produces, markets, brokers, or otherwise uses in its business,

  (ii) a related commodity, security, or variable,

  (iii) a commodity, security, or variable that affects the commodity that the person buys, sells, trades, produces, markets, brokers, or otherwise uses in its business,

  (iv) a commodity, security, or variable for which there is a high degree of correlation between the movement in its value and the movement in the value of the commodity that the person buys, sells, trades, produces, markets, brokers, or otherwise uses in its business, or

(v) another OTC derivative contract, where a material component of the underlying interest of that OTC derivative contract is a commodity, security, or variable referred to in sub-paragraphs (i) to (iv) above;

(f) a person that,

(i) together with its affiliates, has entered into one or more OTC derivative contracts with counterparties that are not its affiliates, if

(A) the aggregate value of the notional principal amounts of the OTC derivatives is at least $1 billion (or its equivalent in another currency), and

(B) any of the OTC derivative contracts was outstanding on any day during the previous 15 month period, or

(ii) together with its affiliates, had total gross marked-to-market positions of or equivalent to at least $100 million (or its equivalent in another currency) aggregated across counterparties, in one or more OTC derivatives on any day during the previous 15 month period;

(g) a company, partnership, unincorporated association, organization, or trust, with total assets, as shown in the balance sheet for its most recently completed financial year end (prepared in accordance with generally accepted accounting principles and audited, if the party has produced an audited balance sheet for that financial year end), in excess of $25 million (or its equivalent in another currency);

(h) a person that is wholly-owned by any of the persons described in paragraphs (a), (f), and (g);

(i) a person that wholly owns any of the persons described in paragraphs (a), (f), and (g);

(j) a wholly-owned subsidiary of a person described in paragraph (h);

(k) a person whose obligations in respect of the OTC derivative contract are fully guaranteed by another qualified party.

Qualified party

9B2 In this part:

(a) a party to an OTC derivative contract is a qualified party if that party is a qualified party at the time the party enters into the OTC derivative contract; and

(b) a party entering into an OTC derivative contract with a party who claims to be a qualified party is entitled to rely on a representation by that party that the party is a qualified party, unless the first party believes or has reasonable grounds to believe that the representation is false.

Acting as principal

9B3 In this part, a party referred to in paragraph (e) of the definition of accredited investor is deemed to be acting as principal when it acts as an agent or trustee for an account that is fully managed by it.

Exemption for OTC derivative contracts

9B4 A person is not required to register to trade an OTC derivative contract if each party to the trade is a qualified party acting as principal.

Short term foreign exchange transactions not derivative contracts

9B5 For the purposes of the Act and rules, a contract or other obligation to purchase or sell the currency of any jurisdiction, if the terms of the transaction require settlement not later than 3 business days after entering into the transaction, is not a derivative contract.

Contracts providing for physical delivery of commodities not derivative contracts

9B6 For the purposes of the Act and rules, a contract that

(a) is not an exchange contract,

(b) contains an obligation to make or take future physical delivery of a commodity, and

(c) does not allow for cash settlement in place of physical delivery

is not a derivative contract.

Part 10 Market Participant Conduct

Division A
Duties

Duties of directors and officers of issuers

10A1 (1) A director and an officer of an issuer must

(a) act honestly and in good faith with a view to the best interests of the issuer, and

(b) exercise the care, diligence, and skill that a reasonably prudent individual would exercise in comparable circumstances.

(2) The requirements of this section are in addition to and not in substitution for any other law relating to the duty and liability of a director and an officer.

Duty to comply with written undertakings

10A2 A person who has signed a written undertaking to comply with a requirement imposed by the commission must comply with that written undertaking.

Declaration as to short position

10A3 (1) A person who places an order for the sale of a security through a registered dealer acting on the person's behalf and who

(a) does not own the security, or,

(b) if the person is acting as agent, knows that the person's principal does not own the security,

must, at the time of placing the order to sell, declare to the registered dealer that the person or the person's principal, as the case may be, does not own the security, and the dealer must disclose that fact in the written confirmation of sale.

(2) For the purposes of subsection (1), a person does not own a security that

(a) has been borrowed by that person, or

(b) may be acquired by that person on the exercise of a right to acquire the security by purchase, conversion, exchange, or any other means.

Division B
Prohibited Market Conduct

Misrepresentation

10B1 A person must not make a misrepresentation.

Manipulation and fraud

10B2 A person must not engage in conduct relating to a trade in a security if the person knows, or ought reasonably to know, that the conduct

(a) results in or contributes to a misleading appearance of trading activity in, or an artificial price for, a security, or

(b) perpetrates a fraud on any person.

Unfair practices

10B3 (1) A person must not engage in an unfair practice.

(2) For the purpose of subsection (1), an ***unfair practice*** includes doing any of the following in connection with a trade in a security:

(a) putting unreasonable pressure on a person;

(b) taking advantage of a person's inability or incapacity to reasonably protect his or her own interest because of physical or mental infirmity, ignorance, illiteracy, age, or inability to understand the character, nature, or language of any matter relating to that person's decision whether to trade a security; and

(c) imposing conditions on the trade that are harsh, oppressive, or excessively one-sided.

Insider trading or tipping

10B4 (1) In this section,

issuer means a public issuer, a reporting issuer in another Canadian jurisdiction, or an issuer whose securities are traded on a marketplace;

security of an issuer includes a security issued by any person if the value or market price of the security varies materially with the value or market price of a security of the issuer.

(2) A connected person that knows inside information about an issuer must not trade securities of the issuer.

(3) A connected person must not inform another person of inside information about an issuer, unless it is necessary in the course of the issuer's or the person's business.

(4) Unless it is necessary to effect the transaction, a person must not inform another person of inside information about an issuer if the person proposes to

(a) make a take over bid for the securities of the issuer,

(b) become a party to a reorganization or business combination with the issuer, or

(c) acquire a substantial portion of the property of the issuer.

(5) An issuer must not trade in its own securities if material information about the issuer has not been generally disclosed.

Front running

10B5 A person with access to information concerning

(a) an investment program of a mutual fund, or

(b) an investment portfolio that an adviser manages for a client,

must not use that information to trade a security for the person's benefit or advantage, or for the benefit or advantage of an affiliate, associate, or family member.

Defences to Division B contraventions

10B6 (1) A person does not contravene section 10B1 if the person does not know or, in the exercise of reasonable diligence could not have known, that the person made a misrepresentation.

(2) A person does not contravene section 10B4(2) or section 10B4(3) if the person reasonably believed that the information had been generally disclosed at the time the person traded a security or informed another person of the inside information.

(3) A person does not contravene section 10B4(3) if, at the time of giving the inside information, the person reasonably believed that the person receiving the information had knowledge of the information.

(4) A person does not contravene subsection 10B4(2) if the person traded

(a) (i) as agent or trustee for another person as a result of that other person's participation in an automatic dividend reinvestment plan, an automatic purchase plan, or another similar automatic plan, or

(ii) as agent or trustee for another person to fulfill a legal obligation of that other person,

(b) as a result of the person's participation in an automatic dividend reinvestment plan, an automatic purchase plan, or another similar automatic plan that the person started participating in before having knowledge of the information, or

(c) as a result of a legal obligation imposed on the person or that the person agreed to before having knowledge of the information.

(5) An issuer that trades its own securities does not contravene section 10B4(5) if the issuer had a reasonable system to ensure compliance with section 5B1 *[Disclosure of all material information]* and followed a reasonable process for monitoring compliance with the system.

(6) An issuer that trades its own securities does not contravene section 10B4(5) if the issuer conducted or caused to be conducted a reasonable investigation and had no reasonable grounds to believe that there was a contravention of section 5B1.

(7) An issuer that trades its own securities does not contravene subsection 10B4(5) if the issuer

(a) traded the securities under the issuer's automatic dividend reinvestment plan, automatic purchase plan, or another similar automatic plan that the issuer established before the material information arose, or

(b) traded the securities as a result of a legal obligation imposed on the issuer or that the issuer agreed to before the material information arose.

(8) A person does not contravene section 10B4 or section 10B5 if

(a) the person is a corporation, partnership, party, trust, fund, association, or any other organized group of persons, and

(b) the person proves that the individual making the trade on behalf of the person did not have knowledge

(i) of the inside information and was not advised on the trade by an individual who did have that knowledge, or

(ii) of the investment portfolio of the mutual fund or client and was not advised on the trade by an individual who did have that knowledge.

Division C
Prohibited Conduct in Dealing with the Commission

False or misleading statements to commission

10C1 (1) A person must not

(a) make a statement or give information to the commission, to commission staff, or to any person appointed under the Act or rules that, in a material respect and at the time and in light of the circumstances under which it is made, is false or misleading, or

(b) omit facts from a statement or information necessary to make that statement or information not false or misleading.

(2) A person does not contravene subsection (1) if the person did not know and, in the exercise of reasonable diligence, could not have known that the statement or information was false or misleading.

Obstruction of justice

10C2 (1) A person must not destroy, conceal, or refuse to give any information or to produce any record or thing reasonably required for a hearing, compliance review, investigation, or seizure under the Act or rules.

(2) A person contravenes subsection (1) if the person acts prior to an event referred to in subsection (1) and the person knew or ought reasonably to have expected that the event could happen.

Securities Rules

Part 10 Market Participant Conduct

Division A
Duties

Duties of market participants related to record keeping

10A1 (1) Every market participant must keep records necessary for recording its business transactions, financial affairs, and the transactions it executes on behalf of others.

(2) The records in subrule (1) must be kept for not less than 6 years from their creation.

(3) Subrule (2) does not apply to records described in rule 3D4 *[Time for keeping records]*.

Plain language filings

10A2 If a person is required to file a record under the Act or rules, the person must prepare the record in plain language.

Division B
Prohibited Market Conduct

There are no rules in this Division.

Division C
Prohibited Conduct in Dealing with the Commission

There are no rules in this Division.

Securities Act

Part 11 The Commission

Division A
Structure of Commission

Commission continued

11A1 (1) The British Columbia Securities Commission is continued under that name, and is constituted as a corporation consisting of its commissioners appointed under subsection (3).

(2) The commission is responsible for the administration of this Act.

(3) The commission consists of not more than 11 commissioners that the Lieutenant Governor in Council appoints.

(4) The Lieutenant Governor in Council

(a) must designate one commissioner to be chair and chief executive officer of the commission, and

(b) may designate other commissioners to be vice chairs of the commission.

(5) When the chair is absent or incapable of acting, the powers and duties of the chair must be exercised and performed by

(a) a vice chair, or

(b) if no vice chair is present or capable of acting, a person that the minister appoints.

Commission powers generally

11A2 (1) The commission is an agent of the government.

(2) The commission has the power and capacity of a natural person of full capacity.

(3) The *Business Corporations Act* does not apply to the commission.

(4) The commission is liable for taxes only to the extent that the provincial government is liable.

Panels of commission

11A3 (1) The chair may appoint 2 or more commissioners to be a panel of the commission, terminate those appointments, and, except for panels that have commenced a hearing, fill vacancies on a panel.

(2) In matters that the chair refers to a panel, the panel has the powers of the commission.

(3) The chair may refer a matter that is before the commission to a panel or a matter that is before a panel to the commission or to another panel.

Executive director

11A4 The commission must appoint an individual to be the executive director.

Officers, employees, and agents

11A5 The commission may

(a) appoint officers, employees, and agents of the commission,

(b) define the duties of the officers, employees, and agents, and

(c) determine the conditions of the appointment of commissioners, officers, employees, and agents.

Benefits

11A6 The commission may exempt a commissioner, officer or employee from the *Public Service Benefit Plan Act* or the *Public Service Pension Plan Act*.

Division B
Financial Operations of Commission

Minister of Finance

11B1 In this division, *Minister of Finance* means the minister responsible for administering the *Financial Administration Act*.

Financial Administration Act

11B2 Section 12 *[Consolidated revenue fund]* of the *Financial Administration Act* does not apply to the commission.

Revenue and expenditure

11B3 (1) Money received under the Act and rules, other than fines assessed under section 14D2 *[Penalties]*, must be paid to the commission.

(2) Subject to subsection (3), money that the commission receives may be expended for any of the purposes of the Act and rules.

(3) Money received by the commission from orders or settlements, other than amounts designated as cost recoveries, under

(a) section 12D2 *[Administrative penalty]*,

(b) section 12D4 *[Settlements]*,

(c) section 12D1(h) *[Commission ordered disgorgement]*, subject to section 11B4,

(d) section 14C3(1)(l) *[Court ordered disgorgement]*, subject to section 11B4, and

(e) section 14D2(1)(c) *[Disgorgement after offence proven]*, subject to section 11B4

may be expended only for the purpose of educating market participants and members of the public about matters related to trading in securities.

Treatment of disgorged funds

11B4 (1) If the commission receives money from an order under

- (a) section 12D1(h) *[Commission ordered disgorgement]*,
- (b) section 14C3(1)(l) *[Court ordered disgorgement]*, or
- (c) section 14D2(1)(c) *[Disgorgement after offence proven]*,

the commission must notify members of the public, in advertisements, of how a person who has a claim arising from the conduct that resulted in the order being made can seek to have the money applied to the claim.

(2) A person that makes a claim to any money described in subsection (1) must file the claim in the Supreme Court within 3 years from the date of the last advertisement made under subsection (1) and file a copy of that claim with the commission.

(3) If the commission receives a copy of a claim under subsection (2), it must pay money in the amount of the claim or, if the claim exceeds the amount of money the commission has received under subsection (1), all of the money the commission has received under subsection (1), into court.

(4) After 3 years from the date of the last advertisement made under subsection (1), the commission may retain any money not claimed under subsection (2).

(5) If the commission has paid money into court in accordance with the subsection (3), the court must repay to the commission any money not paid to a claimant after all claims made under subsection (2) have been adjudicated.

Fiscal agent

11B5 The Minister of Finance is the fiscal agent of the commission.

Investment

11B6 (1) The commission must place money not immediately required for its operations with the Minister of Finance, for investment.

(2) Money placed with the Minister of Finance under subsection (1) is treated for all purposes as money placed with that minister under section 40(5) *[Investments]* of the *Financial Administration Act*.

Borrowing powers

11B7 If the Minister of Finance approves, the commission may borrow money.

Accounting

11B8 (1) The commission must prepare annual and quarterly financial statements in accordance with Canadian GAAP.

(2) At least once in every financial year, an auditor appointed by the Lieutenant Governor in Council must audit and report on the accounts of the commission, and the commission must pay the costs of the audit.

(3) The financial year of the commission is the one-year period ending on March 31 in each year.

(4) At any time, the Minister of Finance or a person that minister designates may inspect all books or records of account and other financial records of the commission.

Business plan

11B9 At least once in every financial year, the commission must submit to the Treasury Board, for review and approval, a business plan that includes

(a) a proposed budget for the next 3 financial years,

(b) management objectives for the next 3 years, and

(c) other information that the Treasury Board may specify.

Annual report

11B10 (1) Within 90 days after the end of each financial year, the commission must prepare and submit to the minister a report for that financial year.

(2) The minister must provide the report to the Legislative Assembly as soon as practicable.

(3) The report must contain

(a) a summary of the commission's operations for the financial year, and

(b) financial statements for the financial year.

Division C
Orders

Consideration of the public interest

11C1 (1) Subject to subsection (2), before making a decision

(a) on its own motion under

(i) section 11C2 *[Exemptions]*,

(ii) section 11C3 *[Designations]*,

(iii) section 11C4 *[Retroactive effect]*, or

(iv) section 11C5 *[Power to vary commission rules]*, or

(b) under any provision of the Act or rules

the commission must consider the decision to be in the public interest.

(2) Before making a decision on an application under

(a) section 2A6 *[Surrendering authorization]*,

(b) section 3B4 *[Surrender of registration]*,

(c) section 11C2 *[Exemptions]*,

(d) section 11C3 *[Designations]*, or

(e) section 11C5 *[Power to vary commission rules]*,

the commission must be satisfied that the surrender, exemption order, designation, or variation is not prejudicial to the public interest.

Exemptions

11C2 (1) The commission may exempt a person, trade, or security, or a class of persons, trades, or securities from a requirement of Parts 2 through 9 of the Act or related rules.

(2) The commission may make an order under subsection (1) on application by an interested person or on its own motion.

Designations

11C3 The commission may designate

(a) a person or class of persons to be a mutual fund, public issuer, public mutual fund, market participant, marketplace, or market services provider,

(b) a person to be a person, or included in a class of persons, defined in the Act or rules,

(c) a class of persons to be included in a class of persons defined in the Act or rules,

(d) a thing to be a thing, or included in a class of things, defined in the Act or rules,

(e) a class of things to be included in a class of things defined in the Act or rules, and

(f) a jurisdiction to be a jurisdiction for the purpose of the Act or rules.

Retroactive effect

11C4 (1) The commission may make an order under section 11C2(1) or 11C3 that relates to a period prior to the date of the order.

(2) An order made under subsection (1) does not affect a person if the order would adversely affect the person's vested rights.

Power to vary commission rules

11C5 The commission may vary the rules as they apply to any person, trade, or security, or class of persons, trades, or securities.

Conditions on decisions

11C6 The commission may include conditions in a decision it makes under the Act or rules.

Discretion to revoke or vary decision

11C7 The commission may revoke or vary a decision it made under the Act or rules, or under another enactment or a former enactment.

Division D
Delegation of Commission Powers

Commission delegation

11D2 Subject to subsections (2) and (3), the commission may delegate a power under this Act to the chair, a vice chair, a commissioner, or the executive director.

(2) The commission must not delegate the power to make rules under section 16B1 *[Commission rules]*.

(3) The commission must not delegate to the executive director a power referred to in

(a) section 11C5 *[Power to vary commission rules]*,

(b) section 11C7 *[Discretion to revoke or vary decision]*,

(c) section 12C1 *[Investigation order]*,

(d) section 12C2 *[Power of investigator]*,

(e) section 12C6 *[Order to freeze property]*,

(f) section 12D2 *[Administrative penalty]*,

(g) section 12E1 *[Compliance orders]*,

(h) section 13B1 *[Review of decision]*, or

(i) section 14A1 *[Appointment of receiver, receiver manager, or trustee]*.

Executive director delegation

11D2 The executive director may delegate any power delegated to the executive director under section 11D1(1) to any officer, employee, or agent appointed under section 11A5 *[Officers, employees, and agents]*.

Delegation to other Canadian securities regulators

11D3 (1) Subject to subsection (3), the commission may

(a) delegate a power of the commission under this Act to a Canadian regulator, and

(b) receive a delegation of a power from a Canadian regulator.

(2) Subject to subsection (3), the commission may enter into an agreement with a regulator delegate for

(a) the delegation and receipt of the delegation of any duty or power under subsection (1), and

(b) any matter to implement or administer the delegation.

(3) Under this section, the commission must not delegate a power referred to in

(a) this section,

(b) section 11A3 *[Panels of commission]*,

(c) section 11A4 *[Executive director]*,

(d) section 11A5 *[Officers, employees, and agents]*,

(e) section 11A6 *[Benefits]*,

(f) Division B *[Financial Operations of Commission]*, or

(g) section 11D1 *[Commission delegation]*, and

(h) Division B *[Rules, Regulations, Policies, and Forms]* of Part 16 *[General Provisions]*.

(4) If the commission delegates a power under subsection (1), it may also deem that, in relation to the delegated power, compliance with the securities laws of the jurisdiction of the regulator delegate is compliance with the corresponding requirements under this Act and rules.

Securities Rules

Part 11 The Commission

There are no rules in this part.

Securities Act

Part 12 Compliance and Enforcement

Division A
Compliance Reviews

Compliance review of market participants

12A1 (1) The commission may appoint a person to review the records and conduct of a

(a) marketplace,

(b) market services provider,

(c) registrant or representative,

(d) public issuer,

(e) due diligence provider, or

(f) fund company or custodian of assets of a funds

to determine if the market participant is complying with the Act and rules.

(2) A person conducting a compliance review under subsection (1) may

(a) during business hours, enter premises where the market participant carries on business, and

(b) inquire into and examine the records in the possession of the market participant, and make copies of them.

(3) Following a compliance review under subsection (1), the market participant must pay the commission the required fees and charges for the compliance review.

Cease trade order for non-compliance

12A2 (1) Without a hearing, the commission may order a person, a class of persons, or all persons, to cease trading a specified security or class of securities, or securities generally, if the issuer of the security or the person named in the order

(a) fails to file a record required to be filed under the Act or rules, or

(b) files a record required to be filed under the Act or rules which is not completed in accordance with the Act or rules.

(2) The commission may request additional information from a person or class of persons named in the order.

(3) The commission must revoke an order made under subsection (1) when

(a) the record, completed in accordance with the Act and rules, is filed,

(b) the required material information or significant information is disclosed, or

(c) the person or class of persons named in the order has provided the commission with any additional information requested under subsection (2) or section 5E1 *[Continuous disclosure review]*.

(4) The commission must send the order, and any revocation, to a person named in the order.

Division B
Production Orders

Production orders

12B1 (1) The commission may make an order under subsection (2) for the administration of the Act and rules or another jurisdiction's securities laws.

(2) The commission may make an order requiring a market participant or a person who was a market participant at the time of alleged misconduct to provide information or produce records specified or otherwise described in the order.

(3) The commission may require verification by affidavit of information provided or records produced pursuant to an order under subsection (2).

Division C
Investigation Orders

Investigation order

12C1 (1) The commission may make an order appointing a person to do an investigation for the administration of the Act and rules or another jurisdiction's securities laws.

(2) An order under subsection (1) must specify the scope of the investigation.

Power of investigator

12C2 (1) If the commission is satisfied that it is necessary, it may make an order authorizing an investigator appointed under section 12C1, or a person under the investigator's direction, to

(a) enter, during business hours, premises where a registrant, representative, or an authorized marketplace or market services provider, conducts business, and

(b) require the production of, or, upon giving a receipt, remove any record or thing that reasonably relates to the order made under section 12C1.

(2) A record or thing removed under paragraph (1)(b) must be returned to the person from whom it was taken as soon as practicable.

(3) To the extent it is reasonably necessary to facilitate an investigation, an investigator authorized under subsection (1), or a person acting under the direction of the investigator, may

(a) mark a record or thing produced or removed for identification, or

(b) use or alter a record or thing produced or removed.

Investigator's power to compel evidence

12C3 (1) An investigator appointed under section 12C1 has the same power as the Supreme Court has for the trial of civil actions to

(a) summon and enforce the attendance of a witness,

(b) compel a witness to give evidence on oath or in any other manner, and

(c) compel a witness to produce a record or thing.

(2) A witness cannot refuse to answer questions on the grounds of self-incrimination or exposure to a penalty or civil proceedings.

(3) Despite section 34(5) *[Financial institution not compellable]* of the *Evidence Act*, no financial institution, as defined in that section of that Act, and no officer or employee of a financial institution, is exempt from the operation of this section.

(4) A witness who gives evidence during an investigation conducted under section 12C1 may be represented by counsel.

Additional powers from court

12C4 (1) The Supreme Court may make an order authorizing a person named in the order

(a) to enter into a place described in subsection (2) at any reasonable time, for the purpose of carrying out an investigation of any record or thing that may reasonably relate to the order made under section 12C1,

(b) to require the production of the record or thing referred to in paragraph (a), and

(c) on giving a receipt, to remove the record or thing referred to in paragraph (a) for the purpose of further investigation.

(2) The court may make an order under subsection (1) on application by the commission, and on being satisfied by information on oath that there are reasonable and probable grounds to believe that there may be a record or thing that may reasonably relate to an order made under section 12C1

(a) in a premise where a person conducts business, or

(b) in a building, receptacle, or place.

other than the portion of any premises actually being used as a residence.

(3) An application under subsection (1) may be made without notice and heard in the absence of the public, unless the court otherwise directs.

(4) A record or thing removed under subsection (1) must be returned to the person from whom it was removed as soon as practicable.

(5) An investigator authorized by an order made under subsection (1), or a person acting under the direction of the investigator, may, to the extent reasonably necessary to facilitate the investigation,

(a) mark a record or thing produced or removed for identification, or

(b) use or alter a record or thing produced or removed.

Contempt for uncooperative witness

12C5 (1) The commission may apply to the Supreme Court, and a witness is liable to be committed for contempt as if in breach of an order or judgment of the Supreme Court, if the witness refuses or fails to obey a summons from an investigator under section 12C3 to

(a) attend,

(b) take an oath or give evidence in any other manner,

(c) answer questions, or

(d) produce a record or thing in the custody, possession, or control of the witness.

Order to freeze property

12C6 (1) The commission may make an order for the administration of the Act and rules, or another jurisdiction's securities laws, that

(a) a person having on deposit, under control, or for safekeeping any funds, securities, or other property of the person named in the order hold those funds, securities, or other property, and

(b) a person named in the order

(i) refrain from withdrawing any funds, securities, or other property from any person having them on deposit, under control, or for safekeeping, or

(ii) hold all funds, securities, or other property of a client of that person, or others, in the person's possession or control in trust for an interim receiver, custodian, trustee, receiver manager, receiver, or liquidator appointed under federal or British Columbia legislation.

(2) Unless expressly stated, an order under subsection (1) does not apply to funds, securities, or other property at a clearing agency, or to securities in process of transfer by a transfer agent.

Claims against property

12C7 (1) If the commission considers that it is in the interests of the administration of the Act and rules, or another jurisdiction's securities laws, the commission may notify a land title office or gold commissioner in writing that proceedings are being, or are about to be, taken that may affect land or mining claims belonging to the person named in the notice.

(2) The commission may, in writing, revoke or vary a notice given under subsection (1).

(3) A copy of a notice sent under subsection (1) or a revocation or variation made under subsection (2) must be registered or recorded against the lands or claims mentioned in it and has the same effect as the registration or recording of a certificate of pending litigation or a caveat.

Evidence not to be disclosed

12C8 (1) Without the consent of the commission, a person, other than commission staff, must not disclose any information or evidence obtained or sought to be obtained or the name of any witness examined or sought to be examined under section 12C2 or section 12C3.

(2) Despite subsection (1), a person may disclose information, evidence, or the name of any witness to the person's counsel.

Division D
Enforcement Orders

Commission enforcement orders

12D1 (1) After a hearing, the commission may

- (a) order a person to comply with
    - (i) the Act, the rules, or a commission decision, or
    - (ii) a decision of a marketplace or market services provider,
- (b) order a person, a class of persons, or all persons to cease trading a security, class of securities, or all securities,
- (c) order that any or all of the exemptions in the Act and rules do not apply to a person,
- (d) prohibit a person from
    - (i) being a director, officer, or significant securityholder of another person,
    - (ii) being a fund company,
    - (iii) being a marketplace or market services provider,
    - (iv) being a registrant or a representative,
    - (v) being a due diligence provider, or
    - (vi) working for a market participant in a management or consultative role,
- (e) order a person to disseminate, not disseminate, or change any information or record,
- (f) suspend or impose conditions on
    - (i) a registrant,
    - (ii) an authorized marketplace or authorized market services provider, or
    - (iii) a representative,
- (g) order a market participant to
    - (i) submit to a compliance review of its practices and procedures, and
    - (ii) make changes to its practices and procedures,

(h) order a person to pay to the commission any amount obtained, or payment or loss avoided, as a result of contravening the Act and rules, or

(i) reprimand a market participant.

(2) If the commission considers it necessary, the commission may, without a hearing, make a temporary order under subsection (1) for not more than 15 days.

(3) If the commission considers it necessary, the commission may, without a hearing, extend a temporary order until the hearing under subsection (1) is held and the decision is made.

(4) If the commission makes a temporary order under subsection (2), the commission must send the order and a notice of hearing to each person named in the order.

(5) If the commission extends a temporary order under subsection (3), the commission must send the order to each person named in it.

Administrative penalty

12D2 After a hearing, the commission may order a person to pay the commission an administrative penalty of not more than $1,000,000 for each contravention of the Act or rules.

Payment of investigation and hearing costs

12D3 (1) After a hearing, the commission may order a person to pay the costs of the hearing and related costs.

(2) If a person is found guilty of an offence, the commission may, after a hearing, order the person to pay the costs of the investigation carried out in connection with the offence.

(3) The commission may order costs that include, but are not limited to, the following:

(a) costs incurred by an investigator appointed under section 12C1 *[Investigation order]*;

(b) costs of matters preliminary to the hearing;

(c) costs for the time spent by the commission or commission staff or agents;

(d) fees paid to a witness;

(e) costs of legal services.

Settlements

12D4 The commission may enter into a settlement agreement on any terms and conditions with a person relating to the person's contravention, or alleged contravention, of the Act, rules, or a commission decision, or conduct contrary to the public interest.

Demand on third party

12D5 (1) If a person owes money to the commission under the Act, rules, or a decision of the commission or a court, and a third party is, or is about to become, indebted to the person, the commission may demand of the third party that the money owed to the person be paid to the commission on account of the person's indebtedness to the commission.

(2) A copy of a demand under subsection (1) must be delivered to the person that is indebted to the commission.

(3) A third party must pay the money demanded under subsection (1) to the commission as soon as practicable after the later of

(a) the receipt of the demand, and

(b) the date the money is due to be paid to the person named in the demand.

(4) Money paid to the commission under this section discharges the indebtedness of the third party to the person named in the demand to the extent of the amount of money paid to the commission.

Division E
Compliance Orders

Compliance orders

12E1 On application of an interested party, and if the commission determines that a person has contravened the Act or rules, the commission may order that the person

(a) disseminate, not disseminate, or change any information or record,

(b) comply with the Act and rules, or

(c) pay required fees and charges for the costs related to the application.

Leave to seek compliance order

12E2 (1) An interested person must obtain leave from a single commissioner to make an application under section 12E1.

(2) The commissioner's decision whether to grant leave is final and cannot be appealed.

Securities Rules

Part 12 Compliance and Enforcement

There are no rules in this Part.

Securities Act

Part 13 Hearings and Reviews

Division A
Hearings

Definition of respondent

13A1 In this Part, ***respondent*** means a person commission staff alleges has contravened the Act or rules or acted contrary to the public interest.

Disclosure

13A2 (1) Each party to a hearing must disclose the outline of its case and the evidence it intends to call to support that case.

(2) Each party to a hearing must make the disclosure under subsection (1) sufficiently in advance of the hearing to provide another party with a reasonable opportunity to prepare for the hearing.

(3) The commission may, before or during a hearing, make orders for

- (a) the exchange of documents,
- (b) the exchange of witness statements and reports of expert witnesses, or
- (c) any other form of disclosure.

Authority at hearing

13A3 (1) At a hearing, the commission has the same power as the Supreme Court in a trial of a civil action to

- (a) summon and enforce the attendance of a witness,
- (b) compel a witness to give evidence on oath or in any other manner, and
- (c) compel a witness to produce a record or thing.

(2) At a hearing, the commission

- (a) must receive all relevant evidence that a party submits, and
- (b) is not bound by the rules of evidence.

Scope of hearing

13A4 The commission may decide all questions of fact or law arising in the course of a hearing.

Representation by counsel

13A5 (1) Counsel may represent a party or a witness at a hearing.

(2) Where counsel represents a party or a witness, documents may be served on that party or witness by delivering them to counsel.

Excluding the public from a hearing

13A6 (1) Subject to subsection (2), the public may attend a hearing.

(2) The commission may exclude the public from a hearing if the commission considers that the prejudice to a respondent or a witness outweighs the public interest in opening the hearing to the public.

Location of hearings; joint hearings

13A7 The commission may hold hearings in or outside British Columbia in conjunction with any other regulator, and may consult with that other regulator during the course of a hearing.

Division B

Reviews

Review of decision

13B1 (1) The commission may hold a hearing to review a decision of

- (a) a commissioner, officer, employee, or agent of the commission acting under authority delegated under section 11D1 *[Commission delegation]* or section 11D2 *[Executive director delegation]*, or
- (b) an authorized marketplace or authorized market services provider

if it notifies the decision maker, and the persons directly affected by the decision, within 30 days of the decision.

(2) The commission must hold a hearing to review a decision of

- (a) a commissioner, officer, employee, or agent of the commission acting under authority delegated under section 11D1 or section 11D2, or
- (b) an authorized marketplace or authorized market services provider,

if a person directly affected by the decision so requests within 30 days of the decision and provides a copy of the request to the decision maker.

(3) The executive director has the same rights under subsection (2) regarding a decision referred to in subsection 2(b) as a person directly affected, provided the executive director notifies the commission, the decision maker, and any person directly affected within 30 days of the decision.

(4) In this section, a decision maker is a party to a hearing reviewing its decision.

(5) After the hearing, the commission may confirm, vary, or revoke the decision under review or make another decision it considers proper.

(6) The commission may grant a stay of a decision under review until the hearing is held and the commission makes its decision.

Securities Rules

Part 13 Hearings and Reviews

There are no rules in this part.

Division A
Commission Investigations and the Court

Appointment of receiver, receiver manager, or trustee

14A1 (1) The commission may apply to the Supreme Court for the appointment of a receiver, receiver manager, or a trustee of all or any part of the property of a person.

(2) On an application under subsection (1), the court may appoint a receiver, receiver manager, or a trustee if the court is satisfied that it is in the best interests of

- (a) the person's creditors,
- (b) other persons whose property is in the possession or under the control of the person, or
- (c) securityholders or clients of the person.

(3) The commission may apply under this section without notice to any other person, but any resulting order must be temporary and in effect for no more than 15 days.

(4) A receiver, receiver manager, or trustee appointed under this section

- (a) is the receiver, receiver manager, or trustee of all or any part of the property belonging to the person that is the subject of the order, or held by the person on behalf of or in trust for any other person, and
- (b) may, if authorized by the court, wind up or manage the business of the person that is the subject of the order and may exercise any power necessary or incidental to the winding up or management.

(5) An order made under this section must direct any other person receiving notice of the order to retain all of the person's property that is within or comes into that other person's possession or control, until the receiver, receiver manager, trustee, or the court directs otherwise.

(6) If the commission requests information or records from a trustee appointed for a registrant under this section, the trustee must provide the requested information or records to the commission.

(7) A trustee appointed under this section, the commission, the person that is the subject of the order appointing the trustee, or any other interested party may apply to the court at any time during the administration of the trust for an order

- (a) discharging the trustee,
- (b) appointing another person as the trustee, or
- (c) varying the conditions of the trust.

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(8) On an application under this section, the court may admit as evidence

(a) any hearsay evidence the court considers reliable, or

(b) any oral or written statement, record, or report the court considers relevant.

(9) Section 16C3 *[Immunity of commission and others]* applies to an act done or an omission made in good faith by a receiver, receiver manager, or trustee appointed under this section.

Extrajurisdictional evidence

14A2 (1) On an application by the commission, if it appears to the Supreme Court that a person outside British Columbia may have evidence that may be relevant to

(a) an investigation ordered by the commission under section 12C1 *[Investigation order]*, or

(b) a hearing required or permitted under the Act or rules,

the Supreme Court may issue a letter of request directed to the judicial authority of the jurisdiction in which the person to be examined is believed to be located.

(2) The letter of request referred to in subsection (1) must be

(a) signed by a judge of the Supreme Court, and

(b) provided to the commission for use under subsection (5).

(3) A letter of request issued under subsection (1) may request the judicial authority to which it is directed to

(a) order the person referred to in the letter of request to be examined under oath in the manner, at the place, and by the date referred to in the letter of request,

(b) in the case of an examination for the purposes of a hearing referred to in paragraph (1)(b), order that a person who is a party to the hearing is entitled to

(i) be present or represented by counsel during the examination, and

(ii) examine the person referred to in paragraph (a),

(c) appoint a person as the examiner to conduct the examination,

(d) order the person to be examined to produce at the examination a record or thing specified in the letter of request,

(e) direct that the evidence obtained by the examination be recorded and certified in the manner specified by the letter of request, and

(f) take any other action that the Supreme Court considers appropriate.

(4) The failure of a person entitled under paragraph (3)(b) to be present or represented by counsel during the examination or to examine the person referred to in paragraph (3)(a) does not prevent the commission from reading in the evidence from the examination at the hearing if the examination has otherwise been conducted in accordance with the order made under subsection (1).

(5) The commission must send the letter of request,

(a) if the examination is to be held in Canada, to the Deputy Attorney General for the Province of British Columbia, or

(b) if the examination is to be held outside Canada, to the Under Secretary of State for External Affairs of Canada.

(6) The letter of request must have attached to it

(a) any interrogatories to be put to the person to be examined,

(b) if known, a list with the name, address, and telephone number of

(i) the solicitor or agent of the commission,

(ii) the person to be examined, and

(iii) if applicable, the person entitled under paragraph (3)(b) to be present or represented by counsel during the examination,

both in British Columbia and in the other jurisdiction, and

(c) a translation of the letter of request and any interrogatories into the official language of the jurisdiction where the examination is to take place, if necessary, along with a certificate of the translator, bearing the full name and address of the translator, that the translation is a true and complete translation.

(7) The commission must file with the Deputy Attorney General for the Province of British Columbia or with the Under Secretary of State for External Affairs of Canada, as the case may be, an undertaking to be responsible for any charge and expense incurred by them in respect of the letter of request and to pay them on receiving notification from them of the amount.

(8) This section does not limit any power the commission may have to obtain evidence outside British Columbia by any other means.

(9) The making of an order by a judicial authority pursuant to a letter of request issued under subsection (1) does not determine whether evidence obtained under the order is admissible in evidence in a hearing before the commission.

(10) Unless otherwise provided by this section, the practice and procedure for appointing a person, conducting an examination, and certifying and returning the appointment under this section, as far as possible, is the same as the practice and procedure that govern similar matters in civil proceedings in the Supreme Court.

Extrajurisdictional request for evidence

14A3 (1) In this section, *qualifying letter of request* means a letter of request that

(a) is issued by a court or tribunal of competent jurisdiction outside British Columbia,

(b) is issued on behalf of the regulator in the jurisdiction from which the letter is issued,

(c) is issued in relation to

  (i) a matter under investigation by the regulator referred to in paragraph (b), or

  (ii) a matter that is the subject of a hearing before the regulator referred to in paragraph (b), and

(d) requests that evidence in relation to a matter referred to in paragraph (c) be obtained from a person believed to be located in British Columbia.

(2) On receipt of a qualifying letter of request, the Supreme Court may make the order it considers appropriate and may, without limitation,

(a) order that the person referred to in paragraph (1)(d) be examined under oath in the manner, at the place, and by the date requested by the court or tribunal described in paragraph (1)(a),

(b) order, in the case of an examination for the purposes of a hearing referred to in subparagraph (1)(c)(ii), that a person who is a party to the hearing is entitled to

  (i) be present or represented by counsel during the examination, and

  (ii) examine the person referred to in paragraph (a),

(c) appoint a person as the examiner to conduct the examination,

(d) order that the person referred to in paragraph (1)(d) produce at the examination any record or thing specified in the request,

(e) direct that the evidence obtained by the examination be recorded and certified in the manner requested, and

(f) make any further or other order that the Supreme Court considers appropriate.

(3) An order under subsection (2) may be enforced in the same manner as if the order were made in or in respect of a proceeding brought in the Supreme Court and, if the person referred to in paragraph (1)(d) fails without lawful excuse to comply with the order, the person is in contempt of the Supreme Court and is subject to the penalty that the Supreme Court imposes.

(4) A person ordered to give evidence under subsection (2) has the same right to

(a) receive conduct money or any other money that the person would have received if the examination were held in relation to a proceeding in the Supreme Court, and

(b) refuse to answer questions and produce a record or a thing, or class of records or class of things, that the person would have in a proceeding in the Supreme Court.

(5) The person appointed under paragraph 2(c) as the examiner may administer an oath or affirmation to the person to be examined.

(6) Except if otherwise provided by this section, the practice and procedure in connection with appointing an examiner, conducting an examination, and certifying and

returning the appointment under this section, as far as possible, is the same as the practice and procedure that governs similar matters in civil proceedings in the Supreme Court.

Division B
Appeals of Commission Decisions

Appeal of final commission decision

14B1 (1) A party to a proceeding in which the commission has made a final decision may appeal to the Court of Appeal with leave of a justice of that court.

(2) Subsection (1) does not apply to a person directly affected by

(a) a decision under section 11C2 *[Exemptions]*,

(b) a decision under section 13B1 *[Review of decision]* in connection with the review of a decision of commission staff under section 11C2 *[Exemptions]*, or

(c) a decision made by a person acting under authority delegated under section 11D1 *[Commission delegation]*.

(3) The commission or the Court of Appeal may grant a stay of the decision appealed from until the appeal is completed.

(4) If an appeal under this section is allowed, the Court of Appeal must send the matter back to the commission, unless the parties agree that the court may revoke or vary the commission's decision.

(5) If the Court of Appeal sends a matter back to the commission under subsection (4), the commission must consider the court's decision and the public interest, and make an appropriate decision.

(6) Despite an order of the Court of Appeal in a particular matter, the commission may make a further decision if there is new evidence or if there is a significant change in the circumstances, and that decision is also subject to this section.

(7) The commission is the respondent to an appeal under this section.

Division C
The Court Generally

Committal for contempt

14C1 If a person's conduct in or in relation to a hearing required or permitted under the Act would be a contempt of the Supreme Court if done in relation to a hearing of that court, the commission may apply to the Supreme Court and the person is liable to be committed for contempt as if the person were in breach of an order or judgment of the Supreme Court.

Enforcement of commission decisions and settlements

14C2 If the commission or a regulator delegate

(a) makes a decision after a hearing or enters into a settlement, and

(b) files it with the Supreme Court,

the decision or settlement has the same force and effect, and all proceedings may be taken on it, as if it were a judgment of the Supreme Court.

Order for compliance

14C3 On application by the commission, if the Supreme Court is satisfied that a person has contravened the Act or rules, it may make any interim or final order the court considers appropriate, including, without limiting the generality of the foregoing, an order:

(a) that the commission could make under section 12D1 *[Commission enforcement orders]*;

(b) that sets aside a transaction relating to a trade in a security;

(c) that the person issue, cancel, purchase, exchange, or dispose of a security;

(d) that prohibits the person from voting or exercising any other right attaching to a security;

(e) that appoints a director or officer of the person in place of, or in addition to, the existing directors and officers of the person;

(f) that the person purchase the security of a holder;

(g) that the person repay a securityholder money paid by the securityholder for the security;

(h) that the person produce to the court or an interested party financial statements in the form required under the Act or rules, or an accounting in the form the court determines;

(i) that the person correct its records;

(j) that the person compensate or make restitution to another person;

(k) that the person pay general or punitive damages to another person;

(l) that the person pay to the commission any amounts obtained, or payment or loss avoided, as a result of contravening the Act or rules;

(m) that the person rectify any contravention of the Act or rules to the extent that rectification is possible.

Division D
Offences

Contraventions that are not offences

14D1 Notwithstanding the *Offence Act*, a contravention of these sections is not an offence:

(a) section 10A1, *[Duties of directors and officers of issuers]*;

(b) section 10A2 *[Duty to comply with written undertakings]*; and

(c) those contraventions that are specifically stated in the rules not to be offences.

Penalties

14D2 (1) A person who commits an offence under this Act is liable to

(a) a fine of not more than $3 million, or to imprisonment for not more than 3 years, or both,

(b) compensate or make restitution to another person, and

(c) pay to the commission any amount obtained, or payment or loss avoided, as a result of the contravention.

(2) Despite subsection (1), if a person committed an offence by contravening section 10B2 *[Manipulation and fraud]* or 10B4 *[Insider trading or tipping]*, the fine to which that person is liable is

(a) not less than any profit made by that person because of the contravention, and

(b) not more than the greater of

(i) $3 million, and

(ii) an amount equal to triple any profit made by that person because of the contravention.

(3) Despite subsection (2), if a person committed an offence by contravening section 10B4(3) or (4) *[Tipping]*, the fine to which that person is liable is

(a) not less than any profit made by that person because of the contravention, and

(b) not more than the greatest of

(i) $3 million,

(ii) an amount equal to triple any profit made by that person because of the offence, and

(iii) an amount equal to triple any profit made by one or more other persons who

(A) were informed by that person of the inside information in contravention of section 10B4(3) or (4), and

(B) with knowledge of the inside information, traded a security in contravention of section 10B4(2).

(4) For the purposes of subsections (2) and (3), *profit* means the amount determined in accordance with the rules.

Execution of warrant issued in another Canadian jurisdiction

14D3 (1) If a court of another Canadian jurisdiction issues a warrant for the arrest of a person on a charge of contravening provisions of the securities laws of that other jurisdiction corresponding to the provisions of the Act or rules, a British Columbia court within whose territorial jurisdiction that person is or is suspected to be, may, on satisfactory proof of the handwriting of the person who issued the warrant, make an endorsement on the warrant.

(2) A warrant endorsed under subsection (1) is sufficient authority to

(a) the person bringing the warrant,

(b) any other person to whom it was originally directed, and

(c) any peace officer within the territorial jurisdiction of the British Columbia court that endorsed the warrant

to execute the warrant within that territorial jurisdiction, to take the person arrested under the warrant out of, or anywhere in, British Columbia, and to re-arrest that person anywhere in British Columbia.

(3) A peace officer

(a) of British Columbia, or

(b) of any other Canadian jurisdiction who is passing through British Columbia,

having in the peace officer's custody a person arrested in another Canadian jurisdiction under a warrant endorsed under subsection (1), is entitled to hold, take, and re-arrest the person anywhere in British Columbia under the warrant without proof of the warrant or the endorsement.

Securities Rules

Part 14 The Court

Division A
Commission Investigations and the Court

There are no rules in this Division.

Division B
Appeals of Commission Decisions

There are no rules in this Division.

Division C
The Court Generally

There are no rules in this Division.

Division D
Offences

Contraventions that are not offences

14D1 For the purposes of section 14D1 of the Act *[Contraventions that are not offences]*, contraventions of these rules are not offences:

(a) the schedule to Part 3 *[Code of conduct]*;

(b) rule 10A2 *[Plain language]*.

Profit

14D2 For the purposes of sections 14D2(2) and (3) *[Penalties]* of the Act, *profit* means the applicable amount determined as follows:

(a) profit of a person who purchased a security in contravention of section 10B4(2) of the Act *[Insider trading]* means the amount determined by

  (i) ascertaining the volume-weighted average market price of the security over the 20 trading days immediately following general disclosure of the material information,

  (ii) subtracting from that price the amount paid by that person for the security, and

  (iii) multiplying the difference by the number of securities the person purchased;

(b) profit of a person who sold a security in contravention of section 10B4(2) of the Act *[Insider trading]* means the amount determined by

  (i) ascertaining the amount received by that person for the securities sold and subtracting from that amount

(ii) the volume-weighted average market price of the security over the 20 trading days immediately following general disclosure of the material information multiplied by the number of securities the person sold;

(c) profit of a person who informed another person of inside information in contravention of section 10B4(3) or (4) of the Act *[Tipping]* and received any consideration in return means the value of the consideration received by that person; and

(d) profit of a person in circumstances not set out in paragraph (a), (b), or (c), means the amount determined by the court.

Securities Act

Part 15 Investor Remedies

Division A
Rights of Action

Action for damages

15A1 (1) If a person contravenes the Act or rules, an investor or client has a right of action for damages:

(a) against the person who contravened the Act or rules;

(b) if the person in paragraph (a) is a representative of a registrant, against that registrant;

(c) against an expert, if the expert's opinion or report contained a factual misrepresentation, the expert provided written consent to the use of the expert's opinion or report, and the expert had not withdrawn in writing the previously given consent;

(d) against a due diligence provider that provided a due diligence opinion in connection with an offering, if the investor participated in the offering and there was a misrepresentation in the issuer's continuous disclosure record during the offering;

(e) against a registered dealer that trades securities as principal or agent in connection with an offering, if the investor participated in the offering and there was a misrepresentation in the issuer's continuous disclosure record during the offering;

(f) against any person who, alone or in concert with another, used the person in paragraph (a) as a vehicle to effect a take over bid; and

(g) against a person who was director of a person referred to in paragraph (a), (b), (c), (d), (e), or (f) at the relevant time or an officer of that person who authorized, permitted, or acquiesced in the contravention.

(2) If a mutual fund contravenes the Act or rules, the fund company primarily responsible for managing that mutual fund is deemed to be the person in paragraph (1)(a) rather than the mutual fund.

(3) If a person contravenes a disclosure requirement in the Act or rules applicable to a public issuer or restricted issuer or one of its securityholders, an investor only has a right of action if the consequences of the contravention would be likely to significantly affect the value or market price of the issuer's securities.

(4) If a person contravenes any requirements of the Act and rules, other than a contravention described in subsection (3), an investor or client only has a right of action if a reasonable investor or client would consider the contravention important in making a decision to trade a security or to enter into a trading or advising relationship with a person.

(5) For an action relating to a contravention described in subsection (3), section 10B2 *[Fraud and market manipulation]*, or section 8B3 *[Disclosure of significant information]*, an investor has a right of action only if the investor traded a security that was affected by the contravention during the period that the contravention was occurring.

(6) An investor does not have a right of action for a contravention of section 10B4 *[Insider trading or tipping]* unless the investor traded a security during the period beginning when the contravention occurred and ending when the disclosure of the material information was made.

(7) For an action relating to a contravention of section 10B5 *[Front running]*, the investor has a right of action only if the investor traded a security that was affected by the contravention during the period beginning when the contravention occurred and ending when the trade was made for the investment program of the mutual fund or the investment portfolio managed for a client.

Withdrawal right

15A2 An investor, who purchases a security of a restricted issuer under an exemption that requires the delivery of a required disclosure document, may cancel the purchase by delivering notice to the issuer not later than midnight on the second business day after the purchaser receives the required disclosure document.

Action for rescission

15A3 If there is a misrepresentation in a required disclosure document of a restricted issuer or in the continuous disclosure record of a mutual fund, an investor may elect to cancel the trade with the issuer or mutual fund, in which case the investor has no right of action for damages under section 15A1.

Rescission in national prospectus offerings

15A4 If an issuer makes an offering under a prospectus in British Columbia and in another jurisdiction in Canada, an investor in British Columbia who purchases a security offered under the prospectus may elect to cancel the purchase if the prospectus contains a misrepresentation.

Rescission in national take over or issuer bids

15A5 If a person makes a bid in British Columbia and in another jurisdiction in Canada, an investor in British Columbia to whom the take over bid circular, issuer bid circular, notice of change, or notice of variation was required to be sent, may elect to cancel a trade in a security it made with the issuer, if

- (a) the document sent contained a misrepresentation, or
- (b) a document required to be sent was not sent.

Accounting for benefits

15A6 If a person contravenes section 10B4 *[Insider trading or tipping]* or section 10B5 *[Front running]*, that person is liable to account to the issuer, the mutual fund, or the client of the portfolio manager or registered dealer for any benefit that the person or any other person receives as a result of the conduct constituting the contravention.

Reliance

15A7 An investor that has a right of action under this part for a misrepresentation under section 10B1 *[Misrepresentation]* or for an issuer's failure to disclose material or significant information as required by section 5B1 *[Disclosure of all material information]* or section 8B3 *[Disclosure of significant information]* is deemed to have relied on the misrepresentation or the failure to disclose material or significant information.

Multiple contraventions

15A8 In an action under this part, multiple contraventions having common subject matter may, in the discretion of the court, be treated as a single contravention.

Action for non-compliance with Part 6

15A9 (1) In this section, an ***interested person*** means

(a) an offeree issuer,

(b) a securityholder, director, or officer of an offeree issuer,

(c) an offeror, or

(d) any person not referred to in paragraphs (a) to (c) who, in the opinion of the Supreme Court, is a proper person to make an application under this section.

(2) An interested person may apply to the Supreme Court for an order under this section.

(3) On an application under subsection (2), if the Supreme Court is satisfied that a person has contravened Part 6 of the Act *[Take over bids and issuer bids]* or the related rules, the Supreme Court may make an interim or final order that the court thinks fit including:

(a) an order for damages suffered as a result of a contravention, in which case the interested person has no right of action for damages under section 15A1;

(b) an order rescinding a transaction with an interested person, including an issue of a security or a trade of a security;

(c) an order requiring a person to dispose of a security acquired in a take over bid or an issuer bid;

(d) an order prohibiting a person from exercising voting rights attaching to any security;

(e) an order requiring the trial of an issue.

Additional rights

15A10 The rights of action under this part are in addition to and not in substitution for any other right a person may have.

Division B
Defences

Plaintiff's knowledge

15B1 No person is liable to an investor or client under this part if the investor or client knew of the conduct constituting the contravention at the relevant time, except for conduct that contravenes section 10B3 *[Unfair practices]*.

Reasonable system

15B2 (1) An issuer, registrant, or a director of the issuer or registrant, is not liable under section 15A1 *[Action for damages]* or section 15A3 *[Action for rescission]* if, at the relevant time, the issuer or registrant had a reasonable system to avoid contraventions of the Act and rules and followed a reasonable process for monitoring compliance with the system.

(2) A person is not entitled to the defence in subsection (1) if the plaintiff proves that the person knew of the contravention or was reckless or willfully blind about it.

Due diligence

15B3 (1) Subject to subsection (2), a person is not liable under section 15A1 or section 15A3, if the person conducted or caused to be conducted a reasonable investigation and had no reasonable grounds to believe that there was a contravention of the Act or rules.

(2) A person is not entitled to the defence in subsection (1) if the plaintiff proves that the person knew of the contravention or was reckless or willfully blind about it.

(3) An issuer is not entitled to the defence in subsection (1) in an action under section 15A4 *[Rescission in national prospectus offerings]* or section 15A5 *[Rescission in national take over or issuer bids]*.

Factors relating to due diligence defence

15B4 In determining whether a person's investigation was reasonable under section 15B3, the court must consider all relevant circumstances, including:

(a) the knowledge, experience, and function of the defendant;

(b) the professional standards that apply to an expert who gave an opinion or report;

(c) for a contravention relating to a misrepresentation, the time available before the disclosure was required to be made.

Defence for expert relating to misrepresentation

15B5 An expert is not liable under section 15A1 for a contravention relating to a misrepresentation that derives from the expert's opinion or report if the issuer or another person did not fairly represent the expert's opinion or report.

Misrepresentation in information based on expert's report

15B6 (1) No person, other than an expert, is liable under section 15A1 for a misrepresentation in a part of a document or public oral statement that is based on an expert's opinion or report if

(a) the expert provided written consent to the use of the expert's opinion or report, and

(b) the person did not know, and had no reasonable grounds to believe, that there had been a misrepresentation.

(2) Subsection (1) does not apply if

(a) the person made a misrepresentation to the expert,

(b) the person did not fairly represent the expert's opinion or report, or

(c) the expert withdrew, in writing, the consent it had previously given to the use of the opinion or report.

Confidential filing

15B7 (1) An issuer, or any director or officer of the issuer, is not liable under section 15A1 for a misrepresentation or failure to disclose material or significant information if:

(a) the information was disclosed in confidence to the commission;

(b) at the relevant time, the issuer had a reasonable system to keep inside information confidential and followed a reasonable process for monitoring compliance with the system;

(c) there was a reasonable basis for determining that disclosure of the information would have been unduly detrimental to the issuer and a reasonable basis for maintaining confidentiality;

(d) the information remained confidential until the issuer disclosed it;

(e) the issuer disclosed the information as required by section 15B8 within 24 hours of circumstances arising that would have led a reasonable person in the position of the issuer to conclude that the information may no longer have been confidential.

(2) Subsection (1) does not apply to a person who

(a) traded on inside information, or

(b) informed another person of the inside information, unless it was necessary in the course of the issuer's business.

Inadvertent release and prompt disclosure

15B8 A person is not liable under section 15A1 for an issuer's misrepresentation or failure to disclose material or significant information if the issuer disclosed the information as required within 24 hours of circumstances arising that would have led a reasonable person in the position of the issuer to conclude that the information may no longer have been confidential.

Expectation of confidentiality

15B9 A person is not liable under section 15A1 for a misrepresentation in a document if the person reasonably expected the document to remain confidential and objected in writing to the issuer and the commission once aware that the document was publicly available.

Forward looking information

15B10 A person is not liable for a misrepresentation in forward looking information if

(a) the information is identified as forward looking information,

(b) the information states the material factors and assumptions relied on, and

(c) the person had a reasonable basis for making a statement contained in the forward looking information.

Reliance on disclosure by other issuers or government

15B11 A person is not liable under section 15A1 for a misrepresentation

(a) contained in an uncorrected document that another issuer filed with the commission, a Canadian regulator, or a marketplace, or

(b) in an uncorrected statement that an official person made or that was contained in a public official document,

if

(c) the issuer's disclosure contained a reference identifying the source of the information containing the misrepresentation, and

(d) at the relevant time, the person did not know, and had no reasonable grounds to believe, that the issuer's disclosure contained a misrepresentation.

Division C

Procedural Protections for Defendants

Court approval to proceed

15C1 (1) No action may be commenced under this part without leave of the Supreme Court.

(2) A person applying for leave of the court in subsection (1) must give notice to a potential defendant.

(3) The court may approve an application under subsection (1) if the court is satisfied that there is a reasonable possibility that the action will be resolved in favour of the plaintiff.

Court approval to settle

15C2 (1) A proceeding under this part may be settled only with the approval of the court and on the terms the court considers appropriate.

(2) In an application under subsection (1) for approval, the court must consider if any other actions have been brought regarding the same activity under

(a) this part,

(b) comparable provisions in the securities laws of another Canadian jurisdiction,

(c) common law in any Canadian jurisdiction, or

(d) the civil code in Quebec.

Division D
Damages

Limits on liability

15D1 (1) Subject to subsection (2) and section 15D2(2), in an action under section 15A1 *[Action for damages]*, the maximum amount a defendant is liable for is the lesser of

(a) the plaintiff's actual damages, and

(b) the amount determined in accordance with the rules.

(2) Despite subsection (1), a defendant is liable for the actual damages that the plaintiff incurred if

(a) the action is not against the defendant in its capacity as an issuer and the plaintiff proves that the defendant knew about the contravention or was reckless or willfully blind about it,

(b) the defendant is a registrant or fund company, or

(c) the defendant contravened section 10B2 *[Manipulation and fraud]* or section 10B3 *[Unfair practices]*.

No exemplary or punitive damages

15D2 (1) In an action under this part, the court must not award exemplary or punitive damages.

(2) Despite subsection (1), the court may award exemplary or punitive damages if the defendant acted knowingly or was reckless or willfully blind.

Assessment of damages

15D3 (1) In an action under section 15A1, damages must not include any amount that the defendant proves is attributable to a change in market price of the securities unrelated to the contravention of the Act or rules.

(2) In assessing damages, the court must consider any actions of a plaintiff that contributed to the plaintiff's loss.

(3) In assessing damages, the court must reduce the amount payable under section 15D1(1) by

(a) the aggregate of all damages assessed after appeals, if any, against a person or defendant in all other actions brought in respect of the same contravention under

  (i) section 15A1,

  (ii) comparable provisions in the securities laws in other Canadian jurisdictions,

  (iii) common law in any Canadian jurisdiction, and

  (iv) the civil code in Quebec, and

(b) any amount paid in settlement of any action referred to in paragraph (a).

Proportionate liability

15D4 (1) Subject to subsection (2), a defendant who is found liable in an action under this part is liable, subject to the liability limits set out in section 15D1, for the portion of the damages that correspond to the defendant's responsibility for the damages.

(2) A defendant that is found liable for the full amount of the damages is entitled to claim contribution from any other defendant in the same action, subject to the liability limits set out in section 15D1, if applicable to that defendant.

Loser pays

15D5 Despite the *Class Proceedings Act*, a successful party in an action under this part is entitled to the costs that the court determines under its rules.

Division E
Limitation Period

Limitation period for damages action

15E1 No action may be commenced under section 15A1 *[Action for damages]* after the earlier of:

(a) 3 years after the date on which the contravention occurred, and

(b) 6 months after leave has been granted to commence an action under section 15A1 or under corresponding provisions in the securities law in another Canadian jurisdiction for the same contravention.

Limitation period for rescission action

15E2 No action may be commenced under

(a) section 15A3 *[Action for rescission]*,

(b) section 15A4 *[Rescission in national prospectus offerings]*, or

(c) section 15A5 *[Rescission in national take over and issuer bids]* after 180 days from the date of the transaction that gave rise to the cause of action.

Limitation period for accounting of benefits action

15E3 No action may be commenced under section 15A6 *[Accounting for benefits]* after 3 years from the date of the transaction that gave rise to the cause of action.

Part 15 Investor Remedies

Division A
Rights of Action

Offering memorandum as required disclosure document

15A1 For the purpose of sections 15A2 *[Withdrawal right]* and section 15A3 *[Action for rescission]* of the Act, the required disclosure document is the offering memorandum that must be delivered to the purchaser under rule 3F11 *[Trades under offering memorandum]*.

Division B
Defences

There are no rules in this Division.

Division C
Procedural Protections for Defendants

There are no rules in this Division.

Division D
Damages

Limits on liability

15D1 (1) In this part, ***market capitalization*** for an issuer means the aggregate of the following:

(a) for each class of equity security for which there is a published market, the amount calculated by multiplying

(i) the average number of outstanding securities of the class at the close of trading on each of the 10 trading days immediately before the first day on which the contravention occurred by,

(ii) the average closing trading price of the securities of the class on the principal market on which the securities traded for the 10 trading days before the first day on which the contravention occurred, and

(b) for each class of equity security not traded on a published market, the fair market value of the outstanding securities of that class as of the first day on which the contravention occurred.

(2) For the purpose of section 15D1 *[Limits of liability]* of the Act, the prescribed amounts are

(a) for an issuer, other than a mutual fund, the greater of $1 million or 5% of the issuer's market capitalization,

(b) for a director or officer, the greater of $25,000 or 50% of the total compensation, including stock or deferred compensation, that the director or officer received from the issuer or registrant or their respective affiliates, during the 12 months prior to the contravention giving rise to the action,

(c) for an expert, the greater of $1 million and the amount the expert and its affiliates received from the issuer and its affiliates during the 12 months prior to the contravention giving rise to the action,

(d) for a due diligence provider, the value of the offering,

(e) for a registered dealer that trades securities as principal or agent in connection with an offering, an amount equal to the portion of the value of the offering equal to the underwriter's participation in the offering, and

(f) for a person who contravened section 10B4 *[Insider trading or tipping]* of the Act, an amount equal to triple the profit the person made or loss the person avoided because of that contravention.

Division E
Limitation Period

There are no rules in this Division.

Part 16 General Provisions

Division A
Information and Records

Records in electronic form

16A1 The commission may require that information provided or records produced or filed under the Act or rules be delivered in an electronic form or in any other form that facilitates the electronic storage of the information or records.

Notices generally

16A2 (1) A record or other information that under the Act or rules is required to be sent must be

(a) delivered,

(b) mailed, or

(c) transmitted electronically.

(2) A record sent to a person under subsection (1) must be sent to that person

(a) at the location where the sender knows the person to be,

(b) at the latest address, including e-mail address or facsimile number, that the sender knows as the person's latest address,

(c) at the address for service in British Columbia that person filed, or

(d) at the address of the person's solicitor if the person, or the solicitor, has advised that the solicitor is acting for the person.

(3) If a record or other information that is required to be sent is returned on 3 consecutive occasions, the sender is not required to send the record or information again to the intended recipient until that person informs the sender in writing of the person's new address.

Deemed receipt

16A3 (1) A person is deemed to have delivered a record to the commission if the record is left with the commission during normal business hours.

(2) A person to whom a record was sent is deemed to have received it

(a) if mailed by ordinary mail, on the seventh day after mailing, or

(b) if mailed by registered mail, on the earlier of the seventh day after mailing or the day the person to whom it was sent, or a person accepting it on that person's behalf, acknowledged its receipt in writing.

Reference to record includes amendment

16A4 Unless the context indicates otherwise, a reference to a specific record includes a reference to any amendment or variation of it that is permitted or required under this Act or the rules.

Obligation to keep information confidential

16A5 (1) Every person acting under the authority of this Act, and every person acting under authority delegated by the commission under this Act, must keep confidential all information and records obtained or provided under this Act, or under a former enactment, except so far as the person's public duty requires or this Act permits the person to disclose them or to report or take official action on them.

(2) Subject to subsections (3) and (4), the information and records referred to in subsection (1) must be released to the Ombudsman at the request of the Ombudsman.

(3) All information and records that are obtained

(a) from a law enforcement agency, or

(b) pursuant to an investigation under this Act,

must not be released to the Ombudsman unless the Ombudsman first produces the written consent of

(c) the law enforcement agency, or

(d) the person from whom the information or records were obtained pursuant to the investigation,

to release the information or records.

(4) All information and records that could lead to the identification of an informant under this Act must only be released to the Ombudsman if the person to whom the Ombudsman makes the request first obtains the written consent of the informant to release the information or records.

Commission information sharing

16A6 The commission may collect information from, use information collected from, disclose information to, or share information with a market participant, law enforcement agency, government, or governmental authority, in British Columbia or elsewhere.

Public inspection of records

16A7 (1) Subject to subsection (2) and section 2A2(3) *[Authorization]*, the commission must make all records filed under the Act and rules available for public inspection during normal business hours.

(2) The commission may hold in confidence all or part of a record required to be filed under the Act and rules and information collected by the commission for the purpose of developing policy for the Act and rules if it considers that a person whose information appears in the record would be unduly prejudiced by disclosure of that information, and

that person's privacy interests outweigh the public's interest in having the information disclosed.

Freedom of Information and Protection of Privacy Act

16A8 (1) If there is a conflict between the *Freedom of Information and Protection of Privacy Act* and any of the following provisions, these provisions prevail:

(a) section 2C1 *[Delegation to authorized marketplace or market services provider]*,

(b) section 5E1 *[Continuous disclosure review]*,

(c) section 12A1 *[Compliance review of market participants]*,

(d) Division C of Part 12 *[Investigation Orders]*,

(e) Part 13 *[Hearings and Reviews]*,

(f) section 16A5,

(g) section 16A6, and

(h) section 16A7.

(2) Subsection (1) does not apply to sections 44(2) and (3) *[Commissioner may require records to be produced]* of the *Freedom of Information and Protection of Privacy Act*.

(3) Subsection (1) does not apply to *personal information*, as defined in the *Freedom of Information and Protection of Privacy Act*, that has existed for 100 or more years or to other information that has existed for 50 or more years.

Division B
Rules, Regulations, Policies, and Forms

Commission rules

16B1 (1) Subject to subsection (3), the commission may make rules that are considered necessary and advisable, are ancillary to the Act, and not inconsistent with it.

(2) Without limiting subsection (1) but subject to subsection (3), the commission may make rules as follows:

[text to be developed]

(3) Before making or repealing a rule, the commission must comply with prescribed procedures and requirements.

(4) The *Regulations Act* applies to a commission rule.

Lieutenant Governor in Council regulations

16B2 (1) The Lieutenant Governor in Council may make regulations that are considered necessary and advisable, are ancillary to the Act, and not inconsistent with it, including matters for which the commission has the power to make rules.

(2) Without limiting subsection (1), the Lieutenant Governor in Council may make regulations:

[text to be developed]

(3) If a commission rule conflicts with a regulation that the Lieutenant Governor in Council has made, the regulation prevails.

Commission guidance and policy

16B3 (1) The commission may issue guidance, policies, and other instruments the commission considers advisable to facilitate the exercise of its powers or the performance of its duties under the Act.

(2) Guidance, a policy, or other instrument referred to in subsection (1) is not a commission rule or a regulation within the meaning of the *Regulations Act*.

Required forms

16B4 (1) The commission may specify the structure and content of a required form under the Act or rules, and may specify the principles to be applied in preparing the form and any additional records to be filed with it.

(2) The commission may specify different forms for different classes of market participants, trades, or securities.

Division C
Other Matters

Limitation period

16C1 Except for proceedings under Part 15 *[Investor Remedies]*, a proceeding under this Act must be commenced within 6 years after the date of the last event that gives rise to the proceedings.

Contraventions attributable to others

16C2 (1) If a person, other than an individual, contravenes the Act, rules, or a commission decision, an employee, officer, director, agent, or significant securityholder who authorizes, permits, or acquiesces in the contravention also contravenes the Act, rules, or the commission decision, whether or not

(a) the commission has made a finding that the person has contravened the Act, rules, or the commission decision, or

(b) the person has been convicted of an offence for the contravention.

(2) If a mutual fund contravenes the Act, rules, or a commission decision, the mutual fund's fund company also contravenes the Act, rules, or commission decision.

Immunity of commission and others

16C3 (1) No action or other proceeding, including a judicial review proceeding under the *Judicial Review Proceedings Act*, may be instituted against

(a) the commission,

(b) a commissioner,

(c) the executive director,

(d) an officer, employee, or agent of the commission, or

(e) any person proceeding under an order, a written or oral direction, or the consent of the commission,

for any act done or any omission made in the administration of the Act and rules or the securities laws of another Canadian jurisdiction, unless the person acted in bad faith.

(2) No action or other proceeding, including a judicial review proceeding under the *Judicial Review Proceedings Act*, may be instituted against

(a) a regulator delegate,

(b) a commissioner or other member of a regulator delegate,

(c) an officer, employee, or agent of a regulator delegate,

(d) an authorized market delegate,

(e) a director of an authorized market delegate, or

(f) an officer, employee, agent of an authorized market delegate,

for any act done or omission made in the administration of the Act and rules, unless the person acted in bad faith.

Immunity from judicial review

16C4 No person has any remedy and no proceeding may be instituted, including a judicial review proceeding under the *Judicial Review Proceedings Act*, against any person for any act done or omission made by that person in compliance with the Act, the rules, or any decision made under the Act or rules.

Admissibility in evidence of certified statements

16C5 A statement concerning

(a) whether or not a person is or was registered under this Act or the rules, and any other information related to that statement, and

(b) whether or not a record or other information has been filed under this Act or the rules, and any other information related to that statement,

purporting to be certified by the commission is, without proof of the office or signature of the person certifying, admissible in evidence for all purposes in any action, proceeding, or prosecution.

Securities Rules

Part 16 General Provisions

There are no rules in this Part.

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